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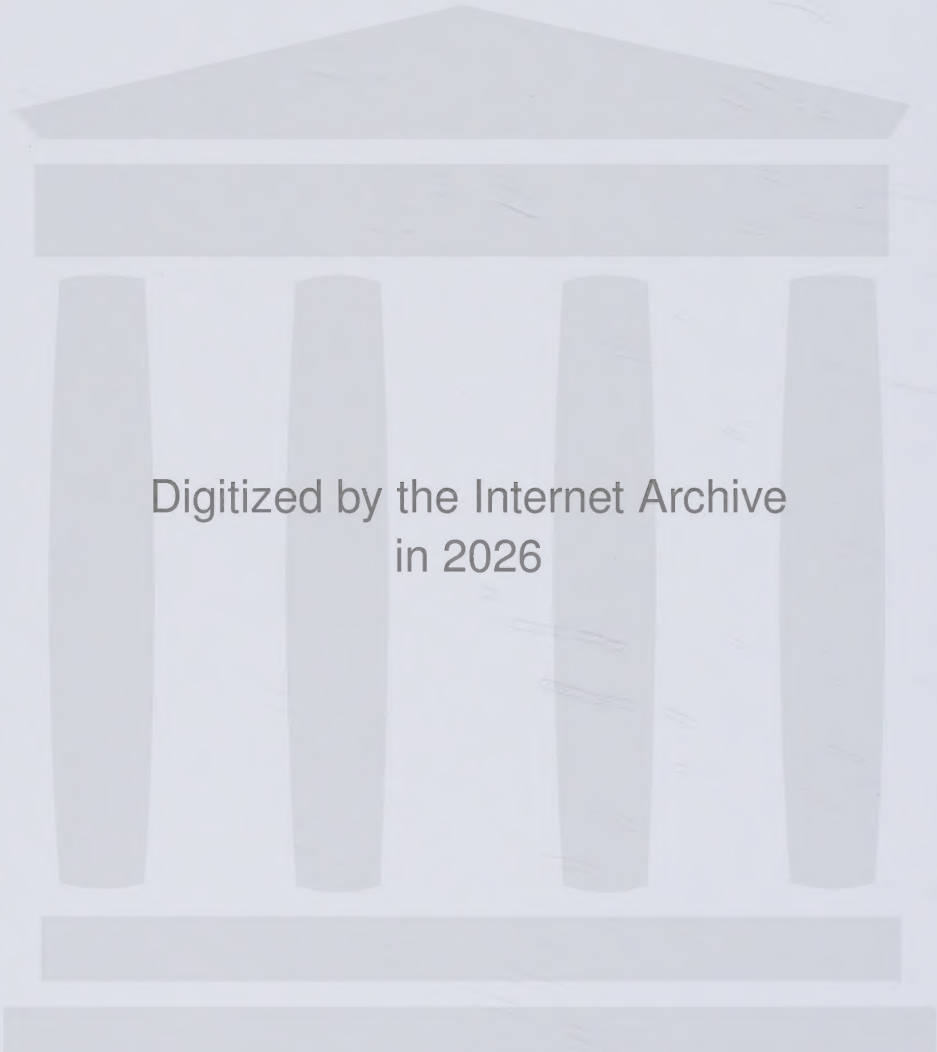
George E. Holmes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Procedure and practice before the United States Board of Tax Appeals.

George E. Holmes

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PROCEDURE AND PRACTICE

BEFORE THE

United States Board of Tax Appeals

BY

GEORGE E. HOLMES

of the New York and District of Columbia Bars, Author of "Holmes Federal Taxes"

and

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JOHN BYRNE & CO

Washington, D. C.

1925

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and
KINGMAN BREWSTER

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*Appointed April 7, 1925

PREFACE

One of the most important changes made by the Revenue Act of 1924, with respect to the administration of Federal tax laws, was the creation of a quasi-judicial body designated as the Board of Tax Appeals. It was originally contemplated that such a Board should be an independent agency within the Treasury Department, but separate from the Bureau of Internal Revenue. The Act of Congress provided otherwise The purpose in the creation of the Board, however, was undoubtedly remedial, and the taxpayer was to be given the benefit of a review of his tax liability by a body not in a position to act both as advocate and judge, as was necessarily possible where the tax was determined within the Bureau.

The United States Board of Tax Appeals, since its inception, has functioned with a promptness and a judicial fairness meriting commendation. Any arguments which may be directed against the advantages accruing to the taxpayer by the creation of the Board of Tax Appeals, arise primarily from its somewhat anomalous position in acting as a buffer between the Bureau of Internal Revenue and the Federal Courts, and as a quasi-judicial body compelled, by reason of the volume of its work, to function in a manner somewhat administrative

It is to be expected that while the Courts remain open to the Treasury Department and the taxpayer, that interpretation of the taxing statutes which may result in considerable loss of revenue to the Government, or additional burden to the taxpayer, will be contested through all the available channels, to the Supreme Court of the United States The taxpayer, however, is no longer confronted with the practice prevailing under prior Revenue Acts, of paying first and litigating afterwards

It was to be assumed that the Board of Tax Appeals would be confronted, in the first year of its existence, with numerous cases which would serve to test the limits of its jurisdiction Decisions have been made by the Board from time to time, in which it has attempted to define the extent of its jurisdiction and powers A number of these difficult problems have been courageously met by the Board. The general tendency has been, quite properly, to assume that since the creation of the Board was remedial in nature, its jurisdiction should not be too narrowly circumscribed It must, of course, be appreciated that numerous similar issues will arise in the future. It is believed, however, that sufficiently important questions of jurisdiction have been determined to justify a discussion of such principles at the present time

In addition to problems of jurisdiction, the Board of Tax Appeals was faced with the necessity of formulating Rules of Procedure The 1924 Revenue law vested in the Board authority to create its own rules. Fortunately, the Board had the advantage of the ex-

perience of the Interstate Commerce Commission and the Federal Trade Commission, upon which it was able to draw. The rules so promulgated have been explained and amplified by the Board in many of its decisions. The Board has indicated an increasing tendency to insist upon its rules being properly observed in the trial of cases before it and in the submission of evidence.

It is believed that a treatment of these subjects at this time, in book form, while necessarily incomplete, will materially assist the practitioner in the presentation of cases before the Board.

All decisions of the Board of Tax Appeals made prior to the date of publication have been examined for authority bearing upon the subject-matter of this volume. Decisions of the Board of Tax Appeals are referred to by name and cited by decision and docket numbers (i. e., Decision No. 31, Docket No. 194). In addition, where the decision has been published in the official reports of the Board the citation is given by volume and page (i. e., 1 B. T. A. 54). Decisions formally approved by the Commissioner are followed by the letter (A). Those disapproved are followed by the letter (D).

Rulings published in the bulletins of the Bureau of Internal Revenue have also been included not infrequently.

The authors desire to express their appreciation to members of the Board of Tax Appeals for helpful suggestions, to those who have assisted in the preparation of this manuscript and especially to Mr. O. R.

Folsom-Jones, of the Bar of the District of Columbia, and Mr. Jacob Mertens, Jr , of the New York Bar

Any criticisms of this first edition of the book, and suggestions for its improvement, will be thankfully received.

GEORGE E HOLMES,
KINGMAN BREWSTER.

815 Fifteenth Street, N. W.,
Washington, D C
July 1, 1925.

PROCEDURE
AND
PRACTICE

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Section 1. Introductory. It is of considerable interest to trace through the various drafts of the Revenue Act of 1924 the provisions for the creation of the Board of Tax Appeals That the Board as finally evolved by Congress was a body much removed from that first contemplated in the suggestion of the Secretary of the Treasury is evident from the sharp comments of the President upon signing the bill establishing the Board as finally evolved.[1] The frequent references in the decisions of the Board of Tax Appeals to the purpose of its creation as indicated by Congressional discussions as a reason for its assuming or declining to take jurisdiction over particular issues makes the consideration of its legislative history of

[1] See page 23

immediately practical as well as historical value In the following paragraphs the important suggestions and changes made in successive drafts have been noted

Section 2 Letter of Secretary of the Treasury—Nov. 10, 1923. Among the amendments to the Revenue Act of 1921 proposed by the Secretary of the Treasury in his letter to the Chairman of the Committee on Ways and Means, on November 10, 1923, was one to "establish a Board of Tax Appeals *in the Treasury*, but independent of the Bureau of Internal Revenue, to hear and determine cases involving the assessment of Internal Revenue taxes" It was stated that "this will give an independent *administrative* tribunal equipped to hear both sides of the controversy, which will sit on appeal from the Bureau of Internal Revenue and whose decision will be conclusive on both the Bureau and the taxpayer on the question of assessment The taxpayer, in the event that decision is against him, will have to pay the tax according to the assessment and have recourse to the courts, while the Government, in case decision will be against it, will likewise have to have recourse to the courts, in order to enforce collection of the tax."

The Secretary again addressed the Chairman of the Committee on December 17, 1923, and further submitted that the proposed Board of Tax Appeals should be created to sit locally in the various judicial circuits throughout the country; that cases both of the Government and the taxpayer could be presented before the Board which would act impartially on all

appeals from the assessment of additional income and estate taxes.

The practice of the Board was to be similar to that before the Interstate Commerce Commission. Upon a decision in favor of the Government the additional tax could be assessed by the Commissioner of Internal Revenue and the taxpayer would be left to his remedy in the courts for the recovery of taxes If the decision was in favor of the taxpayer the Commissioner would not be permitted to assess the tax, but would be left to his remedy in the courts in a suit to collect the additional tax. In a hearing in the courts the findings of the Board would be *prima facie* evidence of the facts contained therein.

Section 3. Treasury Draft of the 1924 Act—Introduced February 7, 1924. Title X, Section 1000 of the Treasury Draft accordingly provided for the creation of a Board of Tax Appeals to be "established *in the Department of the Treasury*," composed of not less than seven nor more than twenty-eight members, as the Secretary from time to time determined necessary. Appointment at a salary of $10,000 was to be *by the Secretary* without regard to civil service laws, but "solely on the grounds of fitness to perform the duties of the office," for a term of ten years except in the case of original appointees, to secure rotations in office, and in the case of a vacancy.

The Chairman of the Board was to be designated from time to time by the Secretary With the latter's approval the Chairman might from time to time divide the Board into divisions, assign members thereto, designate a chief thereof and fill vacancies by

other assignments or direct the subdivision to transact business with less than three members The principal office of the Board was to be at Washington, but the divisions would be authorized to sit at different places in the United States, as convenient. Upon the expiration of thirty days after a decision by a division the same was to become the final decision of the Board unless within that period the chairman directed that such decision be reviewed by the Board.

The jurisdiction of the Board was "to hear and determine appeals filed under Sections 274, 279, 308 and 312" of the proposed Act Sections 274 and 279 revised the provisions of Section 250 of the Revenue Act of 1921 Sections 308 and 312 made similar provisions for appeal from the Commissioner's decisions with respect to estate taxes as obtained in the case of his decisions relating to income taxes

These new sections provided that if the Commissioner determines that there is a deficiency in tax under the Revenue Act of 1924, except where a so-called "jeopardy assessment" is deemed necessary to protect the interests of the Government, the taxpayer should be notified of such deficiency by registered mail The taxpayer was allowed thirty days after such notice to file an appeal to the Board of Tax Appeals. In this respect the new law was to follow the provisions of the Revenue Act of 1921 on appeal to the then existing Committee on Appeals and Review.[2] If the Board determined that there was a

[2] For practice before the former Committee on Appeals and Review, see address of Kingman Brewster Proceedings 16th Annual Conference National Tax Association 1923 p 322 See Art 1006, Reg 62, as amended by T D 3409, and further amended by T D. 3492

deficiency the amount so determined was to be assessed and paid upon notice and demand If the Board disallowed the deficiency as determined by the Commissioner the tax could only be collected by a proceeding in court

Section 280 superseded Section 250(d) of the Revenue Act of 1921 and provided that if after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any income or profits taxes imposed by the Revenue Acts of 1916, 1917, 1918 and 1921, or any amendments thereto, the amount which should be assessed would be computed as if the new Act had not been enacted but the amount so computed should be assessed, collected and paid in the same manner and subject to the same provisions and limitations as a tax imposed by the proposed Act Section 316 made similar provisions for estate taxes proposed by the Revenue Acts of 1917, 1918 and 1921, or amendments thereto The provisions of Sections 280 and 316, respectively, were finally enacted into law substantially as originally drafted Accordingly by necessary construction Sections 280 and 316 brought deficiency disputes under the Acts indicated within the jurisdiction of the Board of Tax Appeals. The taxpayer was to be afforded thirty days' notice by registered mail of a deficiency in tax and given the right to appeal to the Board as in the case of taxes arising under the Revenue Act of 1924 in accordance with Sections 274, 279, 308 and 312.

The Treasury Draft also provided that "in any proceeding in court under Sections 274, 279, 308 or

312 and in any suit or proceeding by a taxpayer to recover any amounts paid in pursuance of a decision of the Board, the findings of the Board should be *prima facie* evidence of the facts therein stated."

The Board was to hear cases on appeal only after giving notice of hearing to the respective parties before it. Proceedings were to be *informal* and in accordance with such rules as the Board with the approval of the Secretary might prescribe The opinions of the Board other than findings of fact were not to be in writing unless the Chairman so ordered The findings of fact in each case were to be reported in writing. The Board or any of its divisions was authorized to sit at such times and places within the United States as the Chairman prescribed.

Any member of the Board was authorized to administer oaths, examine witnesses and require by subpoena the attendance and testimony of witnesses and the production of all necessary books, papers and documents. The attendance of witnesses and the production of such documentary evidence could be required from any point in the United States at any designated place for hearing

The Secretary was to furnish the Board with such clerical assistants, quarters and supplies as necessary. Expenditures for carrying on the work of the Board, including salaries, travel, witness fees, rent where necessary, printing and binding and other contingent and miscellaneous expenses were to be allowed and paid out of any appropriation available for the collection of internal revenue taxes upon presentation of vouchers approved by the Board and signed by the Chairman.

Section 4. Ways and Means Committee Draft—Reported February 11, 1924. At the hearings before the Ways and Means Committee of the House, begun on January 14, 1924, objections were voiced against the proposed Board being under the Department of the Treasury and the appointments of its members being made by the Secretary.[3] It was there specifically brought out that it had been the intent of those individuals and organizations first sponsoring the Board as a partial solution of tax difficulties and a remedy for delays to make the Board an independent unit in the Government. It was urged that its members should be appointed by and responsible to the President. Thus there would be provided a Board from which the taxpayer could with little expense and with little formality obtain impartial decisions relative to deficiencies proposed by the Commissioner.

The Ways and Means Committee accordingly approved a new draft as reported out after the hearings, providing for appointments to the Board and any removal for inefficiency, neglect of duty or malfeasance in office to be made by the *President*. The Board instead of the Secretary of the Treasury was to designate biennially a member to act as Chairman. The approval of the Secretary was not required in the division of the Board into groups, nor in the promulgation of rules and procedure to be followed by the Board. The provision that the proceedings of the Board were to be informal was retained. Findings of fact as well as the decisions of the subdivisions

3 Hearings before Committee on Ways and Means, House of Representatives, pp. 107, 112, 409, 436, 459, 470

were to become the findings of the Board unless within thirty days after the decisions by a subdivision they were reviewed by the whole Board. The times and places of meeting of the Board and of its divisions were to be prescribed by the Chairman with a view to securing reasonable opportunity to taxpayers to appear before the Board or any of its subdivisions with as little inconvenience and expense as would be practicable [4]

Section 5. House Bill as Passed by House of Representatives—February 29, 1924. The bill as reported out of the Ways and Means Committee was passed by the House without substantial modification other than as indicated hereafter Appointments of members of the Board were to be made by the President "with the advice and consent of the Senate" Salaries of members were reduced from $10,000 to $7,500 per annum and a restriction was inserted in the draft on the right of ex-members of the Board to appear before the Board or any official of the Treasury Department for a period of two years after termination of office or after resignation from the Board.

In the bill as passed by the House, the period within which a taxpayer might appeal to the Board was changed from thirty to sixty days after the notice of deficiency by registered mail was sent out by the Commissioner.

Section 6. Finance Committee Draft—Reported April 10, 1924. The Senate Finance Committee, after hearings, made substantial changes in the bill as re-

[4] For majority report of the Ways and Means Committee see Appendix, p 159

ported to it from the House These were principally with respect to the term of office of members composing the Board which, as to those composing the Board within the first two years after the enactment of the Act, was to expire at the end of such period The term of office of the first seven members who thereafter were to compose the Board was to expire at the end of four, six, eight and ten years, the term of each respective member to be designated by the President. The term of office of their successors was to expire ten years after the expiration of a predecessor's term, except in the case of an appointee for the unexpired term of a predecessor.

The Senate Finance Committee also clarified and extended the powers of the Board with respect to the examination of witnesses and included within its authority the ordering or taking of depositions and the answer in writing under oath of any questions of fact submitted Provisions were made for the payment of witness fees similar to those allowed in the cases of witnesses before the Federal courts.

It was provided for the first time that the Board should be an independent agency in the executive branch of the Government

The salaries of members recommended to be $10,000 per annum in the Treasury Draft of the proposed law were reinstated at that amount, the House having reduced them to $7,500 per annum

Sections 274(a) and 308(a) were revised with respect to notice of deficiency in tax to be sent the taxpayer, to read "shall be notified by registered mail, but such deficiency shall be assessed only as

hereinafter provided" The taxpayer as in the House Bill and subsequent drafts was then allowed sixty days within which to appeal to the Board

Subdivision (b) under the same sections was changed so as to clarify the provisions requiring the collection of any deficiency in tax where such deficiency as determined by the Commissioner was disallowed by the Board It was also provided in such section that the court should in its judgment include interest at the rate of six per cent upon the amount thereof from the date upon which payment of the tax was prescribed to the date of judgment

An amendment was proposed on the floor of the Senate that the new Board be given jurisdiction of all claims in abatement and refund in excess of $10,000 and that it should certify back to the Treasury its decisions on such claims[5] It was, however, stated that in order to extend the jurisdiction of the Board to such claims there would be involved an enormous amount of work in addition to that already proposed It was said that to consider properly all claims for abatement and refund that would come before it would require three hundred or more additional members of the Board Accordingly, the proposed amendment was withdrawn[6]

Section 7. Senate Bill—Passed May 10, 1924. A number of important changes were introduced in the bill as passed by the Senate, one change of moment was the provision that hearings before the Board and

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5 See Congressional Record, 68th Congress, First Session, May 2, 1924 Vol 65, No 118, p 7940

6 See Congressional Record 68th Congress First Session, May 2, 1924, Vol 65, No 118, p 7944

its subdivisions should be open to the public[7] Another change, the importance of which is probably only now being fully evidenced, was the elimination by amendment of the provision that the proceedings of the Board were to be informal and the substitution of the provision that the proceedings should be conducted in accordance with such rules of evidence and procedure as the Board may prescribe The Senate Bill added the provision that the testimony at the hearing should be reduced to writing. It likewise included the following new provision

> "It shall be the duty of the board and of each division to make a report in writing of its findings of fact and its opinion and decision in each case, and a copy of its report shall be entered of record and a copy furnished the taxpayer Such report and all evidence received by the board and its divisions shall be public records open to the inspection of the public The board shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use and such authorized publication shall be competent evidence of the reports of the board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof "

The salary of members of the Board was again reduced to $7,500 per annum

A somewhat radical change was made in Section 274(b) of the Act as originally proposed and as modi-

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[7] See statement of Senator Jones of New Mexico Congressional Record 68th Congress, First Session, May 8, 1924 Vol 65, No 124 p 8391

hed by the House of Representatives It was provided by such amendment[8] that where a deficiency was determined by the Board, the deficiency could only be collected by a civil suit where the taxpayer had by written statement declined to acquiesce in the full amount of the deficiency so determined To minimize the number of such refusals to acquiesce in the deficiency determined, certain penalties were provided where the court found that the defense interposed by the taxpayer was frivolous, in bad faith or for the mere purpose of delay Where, however, the deficiency was assessed upon the failure of the taxpayer to exercise his right of appeal to the Board the tax could be assessed and collected upon notice and demand

Section 8 Conference Committee Bill—May 21, 1924. Three material changes were made in the Senate Bill by the Conference Committee One was with respect to the elimination of the restriction placed upon members of the Board practicing before it or the Treasury Department within a period of two years after leaving office The new provision in this connection read

> "No member of the Board appointed for a term beginning after the expiration of two years after the enactment of this Act shall be permitted to practice before the Board or any official of the Bureau of Internal Revenue for a period of two years after leaving office"

Another change was with respect to the matter of reducing testimony to writing It was provided that

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8 For amendment as proposed in Senate and discussion see Congressional Record 68th Congress First Session May 8, 1924, Vol 65, No 124 p 8367

> "If the amount of tax in controversy is more than $10,000 the oral testimony taken at the hearing shall be reduced to writing and the report shall contain an opinion in writing in addition to the findings of fact and decision All reports of the Board and its divisions, and all evidence received by the Board and its divisions (including, in cases where the oral testimony is reduced to writing, the transcript thereof) shall be public records, open to the inspection of the public"

The change of major importance was the elimination of Section 274(b) in the form proposed by the Senate requiring the commencement of a civil suit for the collection of all additional taxes in excess of the amount of deficiency conceded by the taxpayer to be due[9] Section 274(b) as agreed to in conference provided for the assessment and collection upon notice and demand of all amounts determined as deficiencies by the Board Collection by civil suit was only required where the Board disallowed the deficiency as determined by the Commissioner

Section 9. The Final Bill—June 2, 1924. The bill as finally approved by the President on June 2, 1924, contained in Sections 900, 274, 279, 280, 308, 312, 316 and 324, the provisions for the creation, authority and jurisdiction of the Board[10]

In approving the bill the President pointed out that "provision should be made for the prompt and final determination of a taxpayer's liability and such was the purpose in the suggestion for a Board of Tax Appeals"[11]

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[9] See preceding section
[10] See Appendix, p 117
[11] See press statement under date of June 2 1924

The following comment was made by President Coolidge at the time of signing the Revenue Act of 1924·

"The provisions of the bill, however, with reference to the Board make it in all its essentials practically a court of record The Board is to be bound by formal rules of evidence and procedure In each case a formal record must be prepared and oral testimony in cases involving more than $10,000 must be reduced to writing and an opinion in addition to the findings of fact and the decision must be written A taxpayer is entitled to appeal to the Board before any assessment can be made.

"The reduction of the salary of the members of the Board from $10,000, as recommended by the Treasury, to $7,500, and the reduction of the term of office of the original appointees from the ten years recommended to two years, make it difficult to secure for membership on the Board men of training, experience and ability This Board of Tax Appeals, unable to secure the proper type of men for membership, hampered and burdened with rules of procedure and evidence, and forced to provide a record, a finding of fact and a decision in practically every case, will be unable to handle the business which will come to it The result will be greater delay in the final settlement of tax cases and will ultimately result in the breakdown of administrative machinery for the collection of taxes."[12]

Section 10. Organization of the Board—July 16, 1924. Soon after the passage of the Revenue Act of

[12] See press statement under date of June 3, 1924

1924, appointments to the Board were made and later confirmed [13] The Board formally organized on July 16, 1924, electing a Chairman and Secretary It promulgated its rules of practice and procedure July 28, 1924, and received its first appeal on July 30th, 1924. The decision in the first case was handed down August 27.

Up to the present time the Board has found occasion to send out but one division for hearings other than at Washington This division was instructed to hold hearings at Milwaukee, Wisconsin; St Paul, Minnesota, Seattle, Washington, Portland, Oregon, San Francisco and Los Angeles, California, between the dates of May 4, and July 17, 1925 In general, it is apparent that taxpayers prefer hearings on their appeals to take place in Washington The limitation under which the Department's representatives will be obliged to operate at a distance from those previously connected with the case would seem to present a difficulty to the Government in disposing of any extensive docket of cases outside of Washington

[13] See Congressional Record 68th Congress, 2d Session, Dec 17, 1924, Vol 66, No 15, p 735

CHAPTER II

PROCEDURE IN THE BUREAU OF INTERNAL REVENUE PRELIMINARY TO APPEAL TO THE BOARD OF TAX APPEALS

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Section 11. Introductory The procedure followed in the Bureau of Internal Revenue in the determination of the correct tax due is not prescribed by statute, but is a matter of departmental regulation The only right of appeal specifically provided for by the Revenue Act is that to the Board of Tax Appeals and, of course, to the courts A liberal attitude has been adopted by the Bureau of Internal Revenue in providing numerous opportunities for the taxpayer to be heard before any deficiency is determined by the Commissioner The significance of the respective steps followed in the determination of a deficiency by the Commissioner is perhaps not generally appreciated The following paragraphs in this chapter set out in some detail the procedure followed by the Bureau from the time of the filing of the re-

turn to the time of the determination of the deficiency by the Commissioner, from which appeal may be taken to the Board of Tax Appeals

Section 12. Income and Excess Profits Taxes. The orderly progress of a taxpayer's income tax return in the several divisions of the Bureau of Internal Revenue, preceding an appeal to the United States Board of Tax Appeals is briefly as follows

The return is filed with the Collector in the Internal Revenue District in which the taxpayer has his legal residence or principal place of business,[1] and payment is made of the entire tax or at the option of the taxpayer of one-fourth of the tax shown to be due

After summary examination and listing, the return (except those on Forms 1040A and 1040 of gross income of $25,000 and less, and such other returns as the Collector is authorized by the Commissioner to audit)[2] is forwarded by the Collector to the Commissioner of Internal Revenue at Washington, D C.

As soon as practicable thereafter each case is given an audit examination in one or more divisions of the Income Tax Unit.[3] No attempt, however, is made to discuss here the assignment to, or to trace the case through, the respective divisions of the Unit, the course of which depends upon the issues involved in the particular case.

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1 If the taxpayer has no legal residence or place of business in the United States, his return is filed with the Collector of Baltimore, Maryland

2 A & C Mim (Col 3165) The procedure regarding audits in the Collector's office and protest of decisions there made is similar to that with respect to Washington audit, except that the taxpayer's protest should be addressed to and considered by the Collector's office prior to final determination at Washington if necessary

3 Regs 65, Art 1211, as amended by T D 3708, approved May 22, 1925, effective June 1 1925

Following the general provisions of Income Tax Order effective June 1, 1925,[4] all cases, except those which can be closed on the basis of information at hand without additional correspondence with the taxpayer, such as those involving only minor adjustments, or where certain items are known definitely to be improper deductions,[5] are referred forthwith to a Field Agent for audit If any items are considered doubtful, or if the case contains both items known not to be proper deductions and other doubtful items of any importance, the case will not be closed without such field audit

Cases Audited by Field Agent. In cases referred to the field for examination in the first instance, in lieu of office audit, the usual field investigation is completed under the supervision of an Internal Revenue Agent in Charge,[6] and a copy of the Agent's report is first sent to the taxpayer.[7] He is given 30 days[8] within which to file his protest with the Revenue Agent in Charge, and arrange a conference, if desired, with respect to the Examiner's report The protest and the Agent's recommendations, and other papers relating to the case, are forwarded to the Com-

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4 Income Tax Unit Order No 13 Revised

5 Considerable latitude is shown in the Department in an effort to close 1917, 1918, 1919, 1920, and 1921 cases by brief correspondence with the taxpayer prior to referring the case to the field Taxpayers may at this initial stage obtain a hearing upon request

6 Sometimes designated Supervising Internal Revenue Agent, dependent upon location.

7 This report may differ from the taxpayer's return as to (a) facts, (b) conclusions of fact, (c) meaning and application of the law, the Agent being bound by rulings and regulations accepted by the Treasury Department in the interpretation of the taxing statutes. (Official statement issued by the Bureau of Internal Revenue under date of October 2, 1923, later issued as I T 1815, I R B II-30-1161, C B II-2, p 235)

8 Twenty days in which to protest were allowed under the old procedure of T D 3616, effective prior to June 1, 1925

missioner. If no protest is made, the Agent's report is sent to Washington at the end of the 30-day period

The Unit then makes an audit of the taxpayer's return and the Agent's report, together with any other information in its possession, and sends the taxpayer the usual A2 letter, sometimes called an "Assessment Letter,"[9] or more recently, a "30-Day Letter"[10] This letter contains in detail the conclusions of the Unit, and a calculation of the amount of tax due thereby, known as a "tentative deficiency." This letter also contains (a) a request that the taxpayer communicate his approval or disapproval of the Unit's findings, the former by signing and mailing to the Commissioner an acceptance agreement, form attached,[11] and (b) a statement that if the taxpayer does not approve thereof, he may address a protest to the Commissioner within thirty days from the mailing (not receipt)[12] of the letter, then or later to be supported by additional evidence or brief.

If the taxpayer approves the Unit's findings, the amount of difference between the net amount of tax previously assessed and that found due by the Unit, in case the latter exceeds the former, is placed on the assessment list. The tax is technically assessed when the list is finally approved by signature of the Commissioner, or his assistant, acting in his behalf.[13] Thereafter the lists are forwarded to the Collector,

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9 Cases of over-assessment are not discussed here as, in themselves, they are not appealable, except possibly those involving certain claims in abatement which are referred to later.

10 See Form, Appendix, p 170

11 See Form, Appendix, p 173

12 This must be mailed in time to be received within such 30 day period or such period as extended in the ordinary course of the mails

13 Letter of Solicitor to Deputy Commissioner Mires, in charge of Collectors, dated August 7, 1924

with whom the return was originally filed, and in due time the tax is demanded of the taxpayer

If, however, the taxpayer does not approve of the Unit's findings, as stated in the "30-Day Letter" he may within the 30-day period or such additional time as the Department stipulates, prepare and file a protest[14] to contain the following [15]

> (a) The name and address of the taxpayer (in the case of an individual, the residence, and in the case of a corporation, the principal office or place of business).
>
> (b) In the case of a corporation, the name of the State of incorporation
>
> (c) The designation by date and symbol of the letter advising of the tentative deficiency with respect to which the protest is made
>
> (d) The designation of the year or years involved and a statement of the amount of tax in dispute for each year
>
> (e) An itemized schedule of the findings to which the taxpayer takes exception
>
> (f) A summary statement of the grounds upon which the taxpayer relies in connection with each exception
>
> (g) In case the taxpayer desires a hearing, a statement to that effect [16]

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14 Or request for hearing before the Income Tax Unit may be made without protest or formal brief, where a protest and facts have been submitted to the Revenue Agent in Charge in reply to the latter's "30-Day Letter" enclosing a copy of the Agent's report

15 The same form for the protest should be observed in taking exception to adjustments contained in an Agent's report, addressed directly to the Agent in Charge

16 While the exact method of conducting conferences in the Unit (in accordance with T D 3708) has not been finally determined to date it is contemplated that a conference will first be arranged with the Auditor and a conferee, if they are not able to allow the taxpayer's contentions, the case will then be referred to a higher conference unit If, as a result of this subsequent conference the Unit is still in doubt as to the correctness of its decision or if the taxpayer's contentions appear to have merit, especially if involving legal features not clearly covered by existing regulations published rulings of the Department or published opinions of the Solicitor,

The protest may be accompanied or followed by a statement of additional facts or by a brief, or both The protest, statement of additional facts and brief should be filed in triplicate, and in all cases where statements of facts are contained, either in the protest, statement or brief, such paper must be executed by the taxpayer under oath (in the case of a corporation, by a duly authorized officer with the seal of the corporation affixed).

If, after final consideration by the Unit, it appears that a deficiency of tax exists, final determination will will be made and the taxpayer will be notified thereof by a "60-Day Letter,"[17] which will be registered in accordance with the provisions of Section 274(a) of the Revenue Act of 1924 This letter again requests the taxpayer's approval or disapproval of the stated deficiency and advises inter alia, that,

> "In accordance with the provisions of Sec 274 of the Revenue Act of 1924, you are allowed 60 days within which to file an appeal to the Board of Tax Appeals, contesting in whole or in part the correctness of this determination"

Appeal from the Commissioner's determination as contained in this letter lies to the Board of Tax Appeals, which is the subject of discussion in later chapters.[18]

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the matter will be submitted to the Solicitor's representative for an opinion on the legal aspects of the questions involved On questions of fact, the decision of the conference in the Unit will be the final action of the Income Tax Unit prior to the issuance of the 60-day letter

17 See Form Appendix p 172

18 It should be kept in mind, however that under certain circumstances, particularly when the Treasury Department disputes the jurisdiction of the Board of Tax Appeals, a formal 60-Day Letter may not be sent The taxpayer must then decide whether he has a right to appeal to the Board of Tax Appeals

Under the old procedure contained in Art 1211, Reg. 65, as originally promulgated and effective prior to June 1, 1925, in cases where the taxpayer and the Unit did not agree to final adjustments of tax liability, the case was transmitted to the Solicitor of Internal Revenue for attention of the Review Division, by a "letter of Transmittal,"[19] of which the taxpayer was sent a copy. An opportunity was thereafter accorded the taxpayer for a hearing before the Solicitor, and the latter's conclusions were in turn communicated to the Income Tax Unit, after which the "60-Day Letter" previously mentioned, based upon the Solicitor's recommendations, was issued From this letter an appeal lay to the Board of Tax Appeals.

Cases Office Audited. When, from the office audit, it appears that the case may be closed without reference to the field, and there is an apparent deficiency, then the usual "30-Day Letter,"[20] previously described, is prepared and mailed to the taxpayer. Within thirty days from the date of this letter of notification, the taxpayer may file in the Income Tax Unit a protest, in the manner above described, against the determination of the deficiency disclosed by the audit. If no protest is received within the prescribed time, final determination of the deficiency will be made, and the taxpayer will be notified thereof by registered mail.

If a protest is filed, it will be considered in the Income Tax Unit and a hearing granted if requested in

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19 This letter of transmittal set forth the issues still undetermined by the Unit in agreement with the taxpayer, the facts involved in the issue, the taxpayer's contentions, and the Unit's conclusions.

20 See Form, Appendix, p 170

the protest. The procedure, with respect to conferences, is as previously stated in the case of protest from audits in the field. Thereafter final determination of a deficiency will be made, and notification thereof sent to the taxpayer by registered mail, unless a field investigation appears to be necessary. In the latter event a copy of the return, together with the protest, will be referred to the Internal Revenue Agent in Charge for investigation, and the taxpayer will be notified by letter of such reference. The case will then proceed as provided in respect to cases originally referred to the field for investigation. An appeal to the Board of Tax Appeals lies from the final determination by the Income Tax Unit, communicated to the taxpayer by registered letter.

Jeopardy Assessments In cases where assessment of additional taxes is made by the Commissioner subsequent to June 2, 1924, the effective date of the Revenue Act of 1924, under the provisions of Section 274(d) when the Commissioner considers the interest of the Government might be jeopardized by delay, such assessment may be made without affording the taxpayer the usual time for protest and appeal. Such cases frequently arise where the Statute of Limitations is involved and waivers are wanting, or in cases where bankruptcy or insolvency are involved.

It is customary for the Unit to send out a so-called "274(d) Letter"[21] to the taxpayer advising him of immediate assessment and that he has the privilege accorded by Section 279(a) of the Revenue Act of 1924 of filing with the Collector within ten days after

[21] See Form, Appendix, p 174

notice of assessment and demand for payment, a claim in abatement of the whole or a part of the deficiency in tax, pending consideration of any protest as to its correctness. This claim in abatement should have attached to it the basis of the protest and a bond not exceeding double the amount of the claim, with such sureties as the Collector deems necessary.[21a] It is, however within the discretion of the Collector to proceed to immediate collection if he deems it necessary to protect the interests of the Government. Where time does not permit submitting details of protest with the claim in abatement, the same should be submitted within 30 days after filing the claim. Procedure similar to that described for handling protests in cases of field audit, above mentioned, obtains with respect to reference to field investigation, protest and conference afforded the taxpayer, and issuance of an appeal from the Commissioner's final "60-Day Letter."

Special Cases. With respect to special cases and exceptions from the above procedure, it should be noted that:

(a) Consolidated cases[22] which require handling by traveling auditors from Washington, because of the fact that the records necessary to be examined are scattered over two or more divisions and cannot be readily handled from contiguous field divisions, do not follow exactly the procedure heretofore indicated for cases audited in the field, but the field reports in such cases will be referred for final audit to the Income Tax Unit and the taxpayer issued the usual

21a See Appeal of Clois L. Greene, Dec. No. 564, Docket No. 2463.
22 Those cases ruled affiliated and requiring a consolidated return or audit under the different Revenue Acts.

"30-Day Letter," previously described, to which protest may be made and subsequent conferences arranged with the Unit Final determination will be sent to the taxpayer in the "60-Day Letter," also previously mentioned, from which an appeal lies to the Board of Tax Appeals.

(b) In special assessment cases[23] the appropriate office division in Washington shall determine the amount of tax due under applications for special assessment, but the determination of net income (and invested capital in so far as can be determined) is handled the same as other cases

(c) As to those returns which are directed to be retained in the office of the Collector for audit,[24] the taxpayer will be notified by letter from the Collector's office of any deficiency which appears to exist Within thirty days from the date of the letter of notification, the taxpayer may file with the Collector a protest and request an oral hearing If no protest is filed, within the prescribed time, final determination will be made and the taxpayer will be notified by registered mail If a protest is filed, it will be considered in the Collector's office and if the taxpayer and the Collector are unable to agree respecting the amount of deficiency, the return and the complete file pertaining thereto will be forwarded by the Collector to the Commissioner, and will be referred to the Income Tax Unit for consideration, of which the taxpayer will be notified by the Collector. The tax-

23 Those cases to which special relief from computation of tax on a statutory basis may be accorded under the provisions of the several Revenue Acts

24 See footnote No 2, p 27

payer may, within thirty days, request a hearing in the Income Tax Unit If, after consideration by the Income Tax Unit, it appears that a deficiency exists, final determination of the deficiency will be made, the taxpayer being notified thereof by registered mail, from which an appeal lies to the Board of Tax Appeals.

(d) If, in the course of any field investigation, it appears that a wilful attempt has been made to evade tax, a report of the investigation will be forwarded immediately to the Commissioner, and no copy thereof will be furnished to the taxpayer by the Investigating Agent After completion of the audit in the Income Tax Unit, the taxpayer, however, will be notified of such taxes and penalties as appear to be due, and will be allowed thirty days from the date of the letter of notification in which to file protest and request a conference In any case where it is proposed to assert the ad valorem fraud penalty, a hearing on the protest of the taxpayer will be under the supervision of the Solicitor of Internal Revenue, whose recommendation in regard to the assertion of such fraud penalty will be obtained prior to final determination of the deficiency.

(e) From and after the effective date of Treasury Decision No. 3708, to which reference has previously been made, the determination of deficiencies will not be referred to the Solicitor except in cases where the Commissioner or the Deputy Commissioner in Charge of the Income Tax Unit desires the opinion of the Solicitor upon a question of law, and except in cases, where it is proposed to assert an ad valorem fraud penalty.

Section 13. Estate and Gift Taxes.[25] An executor[26] is required to file with the Collector, within two months after his qualification, a preliminary notice on Form 704,[27] advising him of the death of the decedent, in cases where the gross estate exceeds $50,000 in value at the time of death.[28] A final return, for the purposes of the estate tax, is required of the executor on Form 706, within one year of the date of the death of the decedent.[29]

Every resident donor,[30] the total amount of whose gifts in the calendar year as defined in the statute exceeds the various deductions, is required to file a return on Form 706A with the Collector for the district in which the donor is domiciled at the time the return is due.[31]

After the estate or gift tax returns, as the case may be, are filed with the proper Collector, they are forwarded to the Commissioner of Internal Revenue at Washington. The Commissioner may request additional information, copies of documents relating to the estate or gift, appraisal lists, financial statements, and any other information found necessary for the determination of correct taxes.

Every return is subjected to such investigation and

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25 Revenue Act of 1924, Sections 300-324.

26 The provisions apply also to Administrators. The term "executor" embraces any person in actual or constructive possession of any property of the decedent at the time of the latter's death, where within two months after the decedent's death, no executor or administrator qualifies.

27 Form 705 is used for the estate of a non-resident which is in the United States, regardless of value.

28 Reg. 68, Art. 57.

29 Reg. 68, Art. 63.

30 A non-resident donor also files a return for the calendar year on Form 706A, for gifts of property situated within the United States made by him. A "donor" includes an individual, a trust or estate, a partnership, or a corporation.

31 Reg. 67, Art. 26.

inquiry as may be deemed necessary in order to determine its accuracy and the correctness of the tax This investigation, when made, is conducted by special officials of the Bureau, who, in their field of investigation, may inspect the books and records of the estate or donor, verify values and deductions, and take such other steps as may be necessary to determine the correct amount of the tax. Upon completion of the investigation, the executor or donor involved is advised of the examining officials' findings, and given an opportunity to discuss the case and present such data as he may desire in connection with the report

The examining officials' findings, together with any data submitted by the executor or the donor, as the case may be, are then filed with the Commissioner of Internal Revenue at Washington The same are then reviewed and examined, and made the subject of audit by the Commissioner, who advises the taxpayer by letter of the Bureau's tentative findings [32]

The executor or donor may acquiesce in any tax shown due by the tentative deficiency letter, by signing the so-called "Consent Agreement"[33] enclosed therewith, in which case an assessment will be made without further delay If the executor or donor does not wish to acquiesce in the tax proposed, a protest[34] may be filed within thirty days[35] from the date of the mailing of the tentative deficiency letter [36] Evidence supporting this protest may be filed within twenty-

32 See Forms Appendix, pp 176-183 187
33 See form of this agreement, Appendix, p 173
34 For the requirements of the protest see page 30, they are the same as in the case of protest against income tax
35 Sixty days is allowed a non-resident, or resident of Alaska or Hawaii
36 Reg 67, Art 35, Reg 68, Art 76

five days after the time for filing the protest, unless an oral hearing was requested, in which case the evidence must be filed (usually in the form of a brief), not later than five days before the date of the hearing

Where the Miscellaneous Tax Unit and the executor or the donor, as the case may be, are unable thereafter to agree other than on questions of valuation of property or of fact in connection with any deduction claimed by the donor, the unsettled issues may be referred to the Solicitor of Internal Revenue for review and determination These issues are stated in a transmittal letter, a copy of which is furnished the executor or donor affected Twenty days are allowed within which to request an oral hearing before the Solicitor [37] The Solicitor, after consideration of the issues, sends his recommendation to the Commissioner for his approval

The executor or donor involved will be advised by registered mail of the Commissioner's final determination relative to the deficiency in tax [38]

The taxpayer may acquiesce in the tax as shown by this letter at this time by signing the "Consent Agreement" mentioned above, in which case assessment of the tax will be made without delay If, however, the taxpayer does not agree to the deficiency as shown, he may appeal to the Board of Tax Appeals within sixty days from the date of mailing of the deficiency letter [39]

When, however, a jeopardy assessment has been

[37] Sixty days for a non-resident or resident of Alaska or Hawaii is allowed within which to request a hearing
[38] See Form, Appendix, p 185
[39] Reg 67 Art 35 Reg 68, Art 76

made, no appeal can be taken until after a claim for abatement has been filed and acted upon by the Commissioner. The procedure with reference to protesting and appealing of the Commissioner's action on the claim is similar to that in the case of income and profits taxes.

CHAPTER III

JURISDICTION OF THE BOARD OF TAX APPEALS

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Section 14. Introductory. The Treasury Department has been diligent in raising questions of authority of the Board of Tax Appeals to determine on appeal proposed deficiencies arising under specific circumstances This watchfulness upon the part of the Treasury Department has had the fortunate result of securing during the early life of the Board numerous decisions which have served to a considerable extent to define the Board's jurisdiction This chapter is devoted to a consideration of such decisions

Section 15. Definition of Jurisdiction The word "jurisdiction" as used herein cannot be employed in the same sense as where applied to a strictly judicial body As the Board, however, exercises quasi-judicial functions it is believed appropriate to refer to its authority as its jurisdiction, which is "the power to hear and determine a cause "[1]

Section 900 of the Revenue Act of 1924 contains the provision that "the Board shall be an independent agency in the executive branch of the Government "[2]

Except in relation to the personnel of its assistants the Board is entirely disconnected from any other administrative department of the Government. It functions as a tribunal before which facts must be proved and the law reasoned and before which the Commissioner of Internal Revenue and the taxpayer are alike ordinary litigants. The Board, however, is

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1 United States v Arredondo 6 Pet 709
2 See Appeal of Gutterman Strauss Co, 1 B T A 243, Dec No. 97, Docket No 234

clearly not vested with duties of an administrative nature, and has no legislative powers [3]

Section 16. Limited Nature of Jurisdiction. The jurisdiction of the Board is purely statutory and its authority must be found, either expressly or by necessary implication, in the specific language of the Act of Congress creating it,[4] nor can its statutory powers be enlarged in any sense by consent of the parties to a cause before it [5]

As its jurisdiction is to be found in that act, there is no presumption that the Board has jurisdiction, but such must affirmatively appear from the allegations in the petition and from the record [6] The Board's jurisdiction is also in no way affected by the amount in controversy.

Section 17. Territorial Limits of Jurisdiction. The geographical limit of the jurisdiction of the Board is that prescribed in the Revenue Acts of 1916, 1917, 1918, 1921, and 1924, namely, to cases arising with respect to taxpayers who are citizens of the United

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[3] See address of Chas D Hamel former Chairman before the National Tax Association at St Louis, Mo, Bulletin of the National Tax Association Vol 10, No. 2

[4] Secs 900 274, 279 280, 308 312, 316 and 324 of the Rev Act of 1924 These sections cover directly and by reference income and profits' taxes estate taxes and gift taxes No jurisdiction is vested in the Board to hear appeals from determinations of any other taxes It may not, therefore consider appeals from determination of a deficiency imposed by Title VIII of the Revenue Act of 1921 and Title V of the Revenue Act of 1924, see Appeal of the Aldine Club, 1 B T A 710, Dec No 264, Docket No 862

[5] Appeal of David B Mills 1 B T A 199, Dec No 81 Docket No 364 It is stated therein in effect that the voluntary action of the Commissioner in sending out a 60-day letter will not confer jurisdiction on the Board. See also Appeal of Rateau Battu, Smoot Company, 1 B T A 354 Dec No 136, Docket No 343

[6] Brown on Jurisdiction Sec 22 The Board will determine whether it has jurisdiction irrespective of whether objection is raised by the Commissioner to its assuming such jurisdiction See Appeal of A H Stange 1 B T A 810 Dec No. 298, Docket No 553, see also Appeal of Frost Superior Fence Co, 1 B T A 1096, Dec No 417, Docket No 2162

States, including Alaska, Hawaii and the District of Columbia, or relating to income derived from sources therein.

Section 18. Jurisdiction—Original, Not Appellate. The jurisdiction of the Board is not appellate in a technical sense, but is original.[7] A taxpayer bringing his case before the Board proceeds by trial *de novo*. The Board is not created for the purpose of reviewing rulings made by the Commissioner but to determine the correctness of deficiencies in tax found by the Commissioner and to adjust assessments and payments of such alleged deficiencies.[8]

Accordingly the record of the case as made in the Bureau of Internal Revenue is not before the Board except so far as it may be properly placed in evidence by the taxpayer or by the Commissioner. The Board decides each case upon the record made at the hearing before it. This makes it essential to permit the taxpayer to fully present any questions relating to his tax liability which may be necessary to a correct determination of the deficiency.

The Board has jurisdiction to consider an appeal presenting questions affecting the correct tax liability of the petitioner which were not presented to the Commissioner before his determination thereof.[9]

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[7] Appeal of E. J. Barry, 1 B. T. A. 156, Dec. No. 68, Docket No. 99.

[8] Appeal of Robert P. Hyams Coal Co., 1 B. T. A. 217, Dec. No. 89, Docket No. 219 (A). Appeal of Gutterman Strauss Co., 1 B. T. A. 243, Dec. No. 97, Docket No. 234. The amount previously collected must be subtracted from the amount of the tax imposed by the statute in order to arrive at the statutory deficiency. The amount cannot at the same time be both the deficiency and also one of the factors in determining the deficiency. See Appeal of Everett Knitting Works, 1 B. T. A. 5, Dec. No. 2, Docket No. 2.

[9] Appeal of Mary Clark Kling, 1 B. T. A. 1048, Dec. No. 396, Docket No. 1495. Appeal of Gutterman Strauss Co., 1 B. T. A. 243, Dec. No. 97, Docket No. 234. Appeal of E. J. Barry, 1 B. T. A. 156, Dec. No. 68, Docket No. 99.

Where it appears from the record that the deficiency determined by the Commissioner is incorrect, although the taxpayer's contention is denied, the Board will, where possible find the correct deficiency, whether greater or less than that determined by the Commissioner [10]

Section 19 Necessity of Determination by Commissioner and Notice Thereof. It is provided in the law that where a deficiency has been determined, the taxpayer shall be notified of such deficiency by registered mail The taxpayer may appeal to the Board of Tax Appeals within 60 days after the mailing of such notice While the Treasury Department has adopted the so-called "60-Day Letter" for the purpose of such notification it would seem that a determination of deficiency might be indicated by a notice containing no reference to the sixty days While the jurisdiction of the Board is founded upon the fact that there has been a final determination, appeal may not be taken to the Board until *notice* of such determination has been sent by the Commissioner. Any appeal taken prior thereto is considered premature [11]

It has been stated that it is a question of fact

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10 Appeal of Hotel de France Co 1 B T A 28 Dec No 22 Docket No 58 Appeal of E A Armstrong, 1 B T A 296 Dec No 118, Docket No 242 Appeal of Chamberlain Medicine Co, 1 B T A 612 Dec No 230 Docket No 181

11 See Appeal of Franklin H Moyer 1 B T A 75 Dec No 42, Docket No 250 In that case the taxpayer had merely received a letter from the Collector of Internal Revenue for his district advising that additional tax appeared due See also Appeal of Joseph Garneau Company Inc 1 B T A 75, Dec No 43 Docket No 40 (D), Appeal of Elmer S B Sutton 1 B T A 101 Dec No 52, Docket No 306, Appeal of Patrick C Heafey Estate 1 B T A 267 Dec No 106, Docket No 71, Appeal of R A Musser, 1 B T A 278 Dec No 114, Docket No 441, Appeal of Frost Superior Fence Co, 1 B T A 1096 Dec No 417 Docket No 2162 See however Appeal of Fidelity Insurance Agency, 1 B T A 86, Dec No 46, Docket No 254

whether the Commissioner has determined that any assessment should be made and the only evidence of such determination is an assessment made pursuant to the statute, or a letter setting forth the determination on the merits, "however expressed" That such determination is not expressed in an adopted form is immaterial, provided it determines the case on the merits and disposes of the contentions of the taxpayer [12]

Section 20 Necessity of Formal Appeal. The Board has held[13] that after the issuance of the so-called "60-Day Letter," a paper addressed to the Commissioner of Internal Revenue, which requested his consideration of certain facts and which contained no expression of an intention to appeal from the Commissioner's action until after his consideration thereof, cannot, when later filed with the Board at the taxpayer's request, be considered an appeal, and cannot be made the basis of an amended petition The Board stated that "Leaving out of consideration all questions of form and considering only the substance, the paper referred to was in no sense an appeal to the Board"

Section 21. Necessity For Filing Within Sixty Days From Deficiency Notice. The date of mailing and not the date stamped or printed on the notice of deficiency is held to control in determining the final date upon which appeal may be taken The Board has no jurisdiction in cases where the petition of the

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12 Appeal of Ormsby McKnight Mitchel 1 B T A 143 Dec No 65 Docket No 48, Appeal of Yale Kneeland, 1 B T A 150, Dec No 67, Docket No 179

13 Appeal of M T K Products Co, 1 B T A 924, Dec No 338, Docket No 1099,

taxpayer is filed more than 60 days after the notice of deficiency is mailed by the Commissioner [13a] This obtains regardless of the fact that the notice inadvertently bore no date, or the wrong date, if the actual date of mailing by the Commissioner is proved [14] The 60-day period *begins after* the date of mailing, that is, it begins at midnight following the day of mailing.[15] Mailing the appeal in time for it to be received by the Board within the statutory 60-day period is not sufficient to give the Board jurisdiction It must be actually received by the Board within the 60-day period specified in the Act [16]

Where the appeal is not received until the 61st day after mailing of the deficiency notice, the 60th day being on Sunday, the Board has held that it had no authority to extend the 60-day period in the absence of any general statute declaring certain days are not to be included in computing limitations of time [17]

Section 22 Where Determination of Deficiency Requires Consideration of Taxes of Other Years. Where the Commissioner determines after June 2, 1924, that a deficiency assessment should be made in respect to

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13a Appeal of W H Watlington, Dec No 566, Docket No 1756

14 Appeal of Hurst Anthony & Watkins 1 B T A 26, Dec No 18 Docket No 134 The importance of retaining the envelope in which the notice is received is of course apparent

15 Appeal of United Telephone Co 1 B T A 450 Dec No 171, Docket No 761

16 Appeal of William Frantze & Co Inc 1 B T A 26, Dec No 17, Docket No 117 Appeal of Hatch & Bailey Co 1 B T A 25 Dec No 16 Docket No 141

17 Appeal of Sam Satovsky 1 B T A 22 Dec No 15 Docket No 97 It was stated that since the question depended upon the interpretation of a Federal Statute reliance must be placed on the decisions of Federal Courts interpreting other Federal Statutes containing limitations of time for guidance A number of decisions are cited in support of the Board's ruling See also Appeal of B B Davis & Co Inc 1 B T A 587 Dec No 219, Docket No 379, Appeal of Strutwear Knitting Company 1 B T A 11 Dec No 25 Docket No 165 Appeal of Morris Schwartz Dec No 33 Docket No 199, Appeal of Samuel Schwartz Dec No 34, Docket No 198

the tax imposed by the present or prior revenue acts, the Board has jurisdiction to consider the appeal as to all years not barred by the Statute of Limitations affecting the year for which the deficiency is proposed and to arrive at the correct deficiency by first determining and then making allowances for over payments in prior or subsequent years.[18]

The Board has taken jurisdiction of an appeal involving the determination of invested capital for a year in which a deficiency in tax is proposed, even though to do so required it to determine the correctness of a claimed deduction from gross income in a prior year in which an overassessment appears, this was on the ground that the invested capital is affected by the proration therefrom of income tax for a prior year.[19]

The Board has also held that it has jurisdiction to consider an appeal from an alleged deficiency for the year 1920, even though such deficiency is occasioned by an adjustment of its 1918 income tax, which resulted in a reduction of the 1919 net loss deductible from the gross income of 1920, under Section 204(b) of the Revenue Act of 1918.[20]

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[18] Appeal of E. J. Perry, 1 B. T. A. 156, Dec. No. 68, Docket No. 99; Appeal of Hickory Spinning Co., 1 B. T. A. 109, Dec. No. 151, Docket No. 367; Appeal of The Walker-Crim Company, Inc., 1 B. T. A. 599, Dec. No. 218, Docket No. 446 (A); Appeal of Eagle Dye Works, 1 B. T. A. 638, Dec. No. 242, Docket No. 621; Appeal of Robert P. Hyams Coal Co., Ltd., 1 B. T. A. 217, Dec. No. 89, Docket No. 219 (A); Appeal of Fort Orange Paper Company, 1 B. T. A. 1230, Dec. No. 478, Docket No. 641; Appeal of Banna Manufacturing Company, 1 B. T. A. 1037, Dec. No. 390, Docket No. 762. See also Appeal of Gooley & Edmund, Inc., Dec. No. 49, Docket No. 259, in which the Commissioner filed his answer admitting that the amount of tax involved in the appeal was not due for the reason that an overpayment of tax by the petitioning taxpayer had already been credited with the amount of the deficiency.

[19] Tel.-Electric Co., 1 B. T. A. 434, Dec. No. 161, Docket No. 315 (A). See also Appeal of Morrison Foundry Co., 1 B. T. A. 413, Dec. No. 153, Docket No. 348. See also cases cited in footnote 18.

[20] Appeal of Bruin Coal Co., 1 B. T. A. 83, Dec. No. 45, Docket No. 176 (A).

Section 23. Deficiencies Arising Under Prior Revenue Acts. It was promptly held by the Treasury Department[21] that the Board might properly assume jurisdiction over proposed deficiency assessments of income, war-profits, or excess-profits tax arising under the Revenue Acts of 1916, 1917, 1918, and 1921, or any such Acts as amended The same rule was applied to estate taxes except for the 1916 Act This jurisdiction was conceded on the theory that Sections 280 and 316 of the Revenue Act of 1924 incorporated by reference the sections named in Section 900 of that Act, which prescribed *inter alia* "that the Board shall hear and determine appeals filed under Sections 274, 279, 308 and 312"

Jurisdiction will not be taken by the Board over proposed deficiencies with respect to years prior to 1916, or under Revenue Acts prior to that of 1916[22]

Section 24 Assessment Made Prior to June 2, 1924 The Treasury Department on request early expressed its opinion that in all of the cases enumerated below the taxpayer was entitled to a 60-day notice within which he might perfect his right to appeal to the Board of Tax Appeals[23]

(a) Where the taxpayer was notified prior to June 2, 1924, of the Commissioner's final decision (under 250(d) of the Revenue Act of 1921) and assessed after that date whether by jeopardy assessment or not.

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21 S M 2206 I R B III-33-1732 C B III-2 p 278

22 Appeal of David B Mills 1 B T A 199 Dec No 81 Docket No 364, Appeal of Mr and Mrs John Guitar, 1 B T A 213 Dec No 87, Docket No 353, Appeal of Charles J Kinsel 1 B T A 719, Dec No 267 Docket No 1241

23 S M 2282, I R B III-33-1733, C B III-2, p 282

(b) Where the taxpayer was notified as in (a) but no assessment had been made

(c) Where the taxpayer was notified after June 2, 1924, of the Commissioner's final decision and the tax was thereafter assessed

(d) Where the taxpayer was notified as in (c) but the tax was not assessed.

It was also ruled by the Treasury Department that the Board had no jurisdiction and the taxpayer is not entitled to file an appeal in the following cases

(e) Where the taxpayer was assessed prior to June 2, 1924, and filed an abatement claim accepted by the Collector prior to such date, which claim was rejected, and the taxpayer was notified of the Commissioner's decision

(f) Where the taxpayer was assessed and filed an abatement claim as in (e) but was notified of the decision of the Commissioner after June 2, 1924, and the tax had not been paid [4]

The Solicitor has taken the position that, inasmuch as the tax had been assessed prior to June 2, 1924, a determination by the Commissioner occurred prior to the effective date of the Revenue Act of 1924 and accordingly, as Section 280 limits the application of the provisions of Section 274 to those cases where the determination is made after the enactment of the Revenue Act of 1924, the taxpayer is not entitled to

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[4] See also Appeal of Reynolds & Reynolds Co 1 B T A 275, Dec No 111, Docket No 331, see also Appeal of Victor Baron 1 B T A 15 Dec No 11 Docket No 26 Where the tax was so assessed summarily or by mistake the Board has held otherwise see cases cited in footnote 29 For the rule in estate tax cases see pp 54, 55.

file an appeal with the Board in each of the last two cases.[25]

The Board has held that it has no jurisdiction to entertain an appeal in any case in which the deficiency in tax was determined, assessed, and paid, prior to the date of the enactment of the Revenue Act of 1924.[26] On the appeal of *Joseph Garneau Company, Inc.*,[27] however, the Board held that it had jurisdiction over an appeal involving a deficiency tentatively determined prior to June 2, 1924, and later affirmed by the Commissioner subsequent to the passage of the Revenue Act of 1924.

In that case, from the facts reported, it appears that on December 27, 1923, the Commissioner notified the taxpayer of a proposed deficiency in income and profits taxes for 1918 and 1919, pursuant to Section 250(d). The taxpayer appealed to the Committee on Appeals and Review (then existing), which on April 2, 1923 affirmed the deficiency and on April 4, 1923, the taxpayer was so notified. On April 18th, and again on April 29th, May 10th and May 14th, requests for reconsideration by the Commissioner were made by the taxpayer. On May 16th, the taxpayer was advised by the Deputy Commissioner that the tax as set forth in the Department letter of December

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[25] S. M. 2282, I. R. B. III-33-1733. See Appeal of Arthur Beir, 1 B. T. A. 252, Dec. No. 99, Docket No. 339, in which taxes and interest were assessed prior to June 2, 1924, the taxpayer paying the tax, but submitting an offer in compromise of the tax which was rejected September 8, 1924; also Appeal of Patrick C. Heafey, Estate, 1 B. T. A. 267, Dec. No. 106, Docket No. 71. For discussion of jurisdiction where claims in abatement filed on the making of a summary jeopardy or noncompliance assessment, see p. 52.

[26] Appeal of Everett Knitting Works, 1 B. T. A. 5, Dec. No. 2, Docket No. 2. See also section, Claims for Refund and Credit.

[27] 1 B. T. A. 75, Dec. No. 13, Docket No. 40 (D).

27, 1923, would be assessed. The tax was assessed on May 27, 1924, but was not paid.

On July 17, 1924, the Commissioner addressed to the taxpayer a letter stating *inter alia:*

> "Your letter and file have been given very careful consideration * * *
>
> "The decision of the Bureau to the taxpayer under date of April 24, 1924, is hereby confirmed and a request for further consideration of the case is denied"

On the facts as above, it was held that a deficiency was determined by the Commissioner subsequent to June 2, 1924, that the assessment without definite notification by notice and demand was not such a determination as is mentioned in Section 280 Reference was made to the fact that it was apparently the intention of Congress that Section 274 was to be retroactive to January 1, 1924, for the purpose of permitting taxpayers whose appeals under prior Acts had not been closed at that time to continue them under the 1924 Act to conclusion before the Board.[28]

Section 25. Summary, Jeopardy or Non-Compliance Assessments Prior to June 2, 1924. The three terms

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28 In the *Garneau* decision a distinction was drawn between "assessments" and "determinations" Apparently the decision was based upon the two following grounds, (1) that there was a "determination" after June 2, 1924 (2) that the "assessment" was made subsequent to January 1, 1924 See Appeal of Robt D Gould 1 B T A 846, Dec No 305, Docket No 771, see, however, a very comprehensive discussion of the distinction in the Appeal of Terminal Wine Co., 1 B T A 697, Dec No 261 Docket No 55, in which four members of the Board concurred in the result only The Commissioner, however, announced under date of December 22, 1924 that he considered the *Garneau* decision to be incorrect and refused to acquiesce therein, that pending final adjudication of the matter by the Court officers and employees of the Bureau will disregard the decision and proceed with the assessments made prior to June 2, 1924, in accordance with existing regulations (Regulations 65 Article 1391) 1 B T A 75, Dec No 43, I R B III-51-1929, C B III-2, p 304

are frequently used interchangeably although they indicate separate modes of assessment under certain particular circumstances. A number of illustrations of this type are given in the following paragraphs

Assessment Made Through Mistake The Board has held in a number of decisions[29] that an assessment made prior to the enactment of the Revenue Act of 1924 through mistake, and while an appeal was pending before the Commissioner, is not such a determination as would deprive the Board of jurisdiction of an appeal based upon a letter of the Commissioner mailed after June 2, 1924, disposing of the case on its merits

The Board has jurisdiction to consider an appeal from a denial by the Commissioner, subsequent to June 2, 1924, of a claim in abatement of estate taxes assessed on May 11, 1923, without an opportunity for appeal[30]

Jeopardy Assessment The Board has also recently held that, when an assessment was made prior to the year 1924 (as also an assessment made in 1924 before June 2nd) under the so-called "jeopardy clause" of

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[29] Appeal of Ormsby McKnight Mitchel 1 B T A 143, Dec No 65 Docket No 48, see also Appeal of Reynolds & Reynolds Co 1 B T A 275 Dec No 111 Docket No 331, in which the *Garmeau* decision is distinguished, Livingston Worsted Company, 1 B T A 991 Dec No 366, Docket No 1858, Appeal of Boston Structural Steel Company 1 B T A 602 Dec No 225 Docket No 836 Appeal of Buffalo Slag Company, 1 B T A 749, Dec No 277, Docket No 116, but see Appeal of Robert D Gould 1 B T. A 846, Dec No 305 Docket No 771

[30] Appeal of Estate of Peter Reinberg deceased 1 B T A 953, Dec No 348, Docket No 789 Although the tax was assessed in May 1923, it was not considered that a "determination" had been made until the claim in abatement provided for in such cases had been filed and acted upon The claim in abatement served the same purpose of affording a hearing as in the case of an appeal provided for by Section 250 (d) under the 1921 law with respect to income and profits' taxes No final determination could be effectively made until such claim in abatement or appeal had been acted on See also Appeal of United States Trust Co., of N Y. Executors of Francis J Smithers, Deceased, 1 B T A 1086, Dec No 414, Docket No 665

the Revenue Acts, and a claim in abatement was filed, and the Commissioner has made a final determination relative thereto subsequent to June 2, 1924, an appeal lies to the Board [31]

It has been held by the Board that an appeal properly filed and pending, lapses when the taxpayer pays the amount of a jeopardy assessment subsequently made to avoid the running of interest [32]

Section 26. Jeopardy Assessments Under Revenue Act of 1924. Where no notice of deficiency is sent out under subdivision (a) of Section 274 of the Revenue Act of 1924, but only a notice is forwarded of assessment under subdivision (d) (jeopardy assessment) of that section, appeal will not lie until the tax-

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31 See Appeal of River and Rail Storage Company 1 B T A 1098 Dec No 420 Docket No 1233 in which case the summary assessment was made in February 1921 See also Appeal of Terminal Wine Co, 1 B T A 697 Dec No 261 Docket No 55 In this case jeopardy assessment was made on January 10 1922 The taxpayer filed a claim in abatement on March 9 1923 After consideration of the claim it was rejected and the taxpayer notified by letter dated November 15 1923 The letter stated that the Collector would be notified of such determination at the expiration of 30 days after November 15 1923 unless prior to that date evidence was furnished showing the adjustments to be incorrect In response to that letter taxpayer forwarded a letter to the Commissioner dated November 21 1923, restating the objections and repeating the arguments set out in the statement attached to the claim in abatement filed March 9 1923 On July 18 1924 the Collector called upon the taxpayer to pay the assessment The taxpayer argued before the Board that the notice and demand constituted the final determination and notice thereof This contention the Board overruled stating that the allowance of the 30 days granted in the letter of March 9 1923 within which to submit evidence was an indication by the Commissioner that he might reconsider his determination Since no additional or new evidence was offered no necessity arose for any such redetermination But see also Appeal of Clois L Greene Dec No 564 Docket No 2463

32 Appeal of the Northwestern Mutual Life Insurance Co 1 B T A 767 Dec No 283 Docket No 1012 But consider the effect of court's recent decree in the case of Joseph Garneau Co v Bowers U S Dist Ct S D New York refusing to grant an injunction to restrain collection of taxes while an appeal is pending to the Board and where the taxpayer is forced involuntarily to pay the taxes

payer is notified of the Commissioner's action on a proper claim in abatement.[33]

The Board has recently held that it has jurisdiction of an appeal from a determination of the Commissioner, made subsequent to the enactment of the Revenue Act of 1924, denying a claim in abatement of estate taxes assessed prior to the date of such enactment.[33a]

Assessment Subsequent to Notice of Determination

The Board has held, in denying a motion by the Commissioner to dismiss, if, after the determination by the Commissioner and an appeal by the taxpayer, an assessment is made, that neither the right of appeal, the continuance of the appeal nor the right of determination by the Board, is thereby lost. It was stated that the statute contemplates that assessment and claim for abatement may exist contemporaneously with the pendency of an appeal; and that such assessment may be made before notice of the deficiency, before the time for appeal has expired, or before final decision by the Board. When assessment in the last two instances is summarily made, an abatement

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[33] Revenue Act of 1924, Section 279 (b). Appeal of Oakdale Coal Company, 1 B. T. A. 773, Dec. No. 286, Docket No. 1252. Appeal of Patrick C. Heafey Estate, 1 B. T. A. 267, Dec. No. 106, Docket No. 71. See also Appeal of California Associated Raisin Company, Dec. No. 487, Docket No. 190. In this case the Board held it will not inquire into the basis for the Commissioner's belief that the jeopardy exists as provided in Section 274 (d) and also held that the fact that a taxpayer against whom a jeopardy assessment has been made is unable to furnish the bond provided by Section 279 (a) however regrettable that fact may be, cannot serve to authorize an appeal not otherwise provided for by statute. But see Appeal of W. O. Miller Co., Inc., Dec. No. 531, Docket No. 1551.

[33a] Appeal of Peter Reinberg Estate, 1 B. T. A. 953, Dec. No. 248, Docket No. 789. Appeal of U. S. Trust Company of N. Y., 1 B. T. A. 1086, Dec. No. 411, Docket No. 667.

claim may or may not be filed and appeal to the Board taken or continued [34]

Section 27. Special Assessment Cases. The Board of Tax Appeals has assumed jurisdiction to hear appeals from determinations of deficiencies arising under the relief provisions—Sections 327 and 328 of the Revenue Acts of 1918 and 1921.[35]

This issue was presented in the *Oesterlein Machine Company* case, on a motion filed by the Solicitor, to strike out the taxpayer's application for an order to take depositions This motion was treated, in fact, as a plea to the jurisdiction of the Board to hear and determine appeals from deficiencies proposed to be assessed (1) in cases where such deficiency had been determined by the Commissioner under Sections 327 and 328 of the 1918 and 1921 Revenue Laws, respectively, but in which cases the taxpayer contends that the tax should be computed without reference to such provisions; (2) in cases where the deficiency has been determined by the Commissioner without reference to these special assessment provisions, but in which cases the taxpayer contends that the tax should be computed under such; and (3) in cases wherein the deficiency has been determined by the Commissioner under such special assessment provisions, but in which the taxpayer contends that the determination is in error, due to an incorrect computation of the tax thereunder.

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34 California Associated Raisin Company, 1 B T A 314, Dec No 123, Docket No 190, Appeal of Wallach & Mayer, Inc, 1 B T A. 316, Dec No. 124 Docket No 683, latter decision subsequently reversed on submission of new facts, see Appeal of Oakdale Coal Company, 1 B T A 773, Dec No 286 Docket No 1252 Appeal of W O Miller Co, Inc, Dec No 531, Docket No 1551

35 Appeal of Oesterlein Machine Co., 1 B T A 159, Dec No 69, Docket No. 45, Appeal of Producers' Fuel Co, 1 B T A 202, Dec. No 84, Docket No 159; Appeal of Gutterman Strauss Company, 1 B T A 243, Dec No 97, Docket No 234

The Board held that such determination to assess, or refusal so to determine the tax and to recompute the same, did not involve an exercise of discretion vested in the Commissioner by law, to the extent that such decisions and computations thereunder were not reviewable; and also that a review of the Commissioner's computation of the tax under the special assessment section, did not necessitate the making public on appeal of the records of the Commissioner, in violation of the so-called "secrecy provisions" of the Revised Statutes.[36]

The Board has also taken jurisdiction on appeals from deficiencies arising from determinations of the Commissioner made under and with respect to Section 210 of the Revenue Act of 1917.[37]

Section 28. Fraud Cases. The Board has jurisdiction to determine whether there was a fraudulent understatement of income with intent to evade tax in any case[38] and whether the penalty found by the Commissioner should be assessed, collected and paid. It has been held with respect to income taxes that the Board may pass upon the existence of fraud directly and the amount of penalty in any particular case, and that a taxpayer may appeal from a decision of the Commissioner on these questions alone.[39] It would follow that jurisdiction would be taken in like

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[36] Secs. 257, 1018 of the Revenue Act of 1924. See also T. D. 3638.

[37] Appeal of Brownsville & Matamoros Bridge Co., 1 B. T. A. 320, Dec. No. 126, Docket No. 93; Appeal of Lowell Cotton Mills, 1 B. T. A. 303, Dec. No. 120, Docket No. 453.

[38] Appeal of John W. Collinson, 1 B. T. A. 561, Dec. No. 205, Docket No. 550.

[39] Appeal of Gutterman Strauss Co., 1 B. T. A. 243, Dec. No. 97, Docket No. 234; Appeal of A. B. Cohn and wife, 1 B. T. A. 279, Dec. No. 112, Docket No. 416; Appeal of Erie Coca Cola Bottling Works, 1 B. T. A. 531, Dec. No. 193, Docket No. 456.

manner in cases arising under the Estate and Gift Taxes [40]

The Board has taken the jurisdiction indicated above on the ground that a taxpayer has the same right of appeal under prior acts as under the Revenue Act of 1924 and that it is evident from the language of Section 275 of the Revenue Act of 1924 that a taxpayer is also entitled to appeal with respect to the five per cent and fifty per cent penalty "in the same manner as if it were a deficiency." Additional support for the assumption of jurisdiction was found in the provisions of Sections 279 and 308(g) of the Revenue Act of 1924 It was pointed out that Section 279 provides that a taxpayer may, when an emergency assessment under Section 274(d) has been made, file a claim in abatement of the deficiency, or any part thereof, or of any interest or *additional amounts* assessed in connection therewith, or of any part of any such interest or *additional amounts,* and, if such claim is disallowed in whole or in part, the taxpayer may appeal. The words "additional amounts" would indicate that fraud may be included and, being part of the claim, would properly be the subject also of any appeal from an unfavorable decision by the Commissioner on his claim It was also pointed out that such jurisdiction finds support in the words used in the Treasury Draft and the legislative history of the Sections [41]

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40 See dictum in Appeal of Gutterman Strauss Co., 1 B T A 243, Dec No 97, Docket No 234

41 See p 53 of Statement of Changes made in the Revenue Act of 1921 by Treasury Draft and Reasons Therefor, p 24 of Report of Committee on Ways and Means, House of Representatives, p 25 of Statement of Changes made in Revenue Act of 1921 by House Bill, p 30 of Report of Senate Finance Committee, Regs 65, Art 1251.

Section 29 Appeal From Decision As To Exempt Status It has been ruled by the Treasury Department that an appeal does not lie from a decision of the Bureau on all questions affecting the tax liability but may only be taken from the Commissioner's determination of a deficiency Accordingly the taxpayer may not appeal from a denial of classification as an exempt organization until a determination is made of the amount of tax due from the organization for the years involved and a 60-day letter is issued [42]

Section 30. Appeals Based on Statute of Limitations. The Board has held[43] that it has the authority on appeal to determine the correctness of any deficiency merely with reference to the right of the Commissioner under statutory limitation to assess and collect an additional tax. It has declared that the taxpayer may plead the statute of limitations as a reason why a deficiency should not be determined against it in the same manner as it may resort to any other sections of the Revenue Acts.

Section 31. Appeal Filed on Behalf of Another The Board has no jurisdiction to consider an appeal filed by a taxpayer on behalf of other taxpayers similarly situated, not joining in the appeal. In a recent case[44] the Board stated in part as follows.

> "A question presents itself from the face of the petition herein, which was not raised by the Commissioner, but as it relates to the jurisdiction of the Board we feel it is our duty to take notice

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[42] S M 2538, I R B III-45-1868 C B III-2, p 286, Appeal of Permanent Loan and Savings Association, Dec No 556, Docket No 2268

[43] Appeal of The National Refining Co of Ohio, et al, 1 B T A 236 Dec No 94, Docket No 186 (D)

[44] Appeal of A H Stange 1 B T A 810 Dec No 298 Docket No 553 Also see Appeal of Fancy Hill Coal Works, Dec No 560, Docket No 2847

thereof The taxpayer has filed a petition on behalf of himself and nine other named persons, all stockholders of the A H Stange Company, in which it is stated that 'the issue in the case of each stockholder named is identical, which is the reason for filing one petition and asking only one hearing.' The petition is not a joint petition of all the named parties and is the petition of this taxpayer alone We know of no authority in the law, and there is certainly none in the Rules of the Board, sanctioning or permitting an appeal by one taxpayer for or on behalf of another, even though they are all stockholders in the same corporation, and the same question would be raised in an appeal prosecuted by them The Statute authorizes an appeal by the *taxpayer* within 60 days after the deficiency notice is mailed, and the Board has repeatedly held that the filing of a petition with the Board within that time is a jurisdictional matter *Appeal of Sam Satovsky* 1 B. T A 22 We therefore decline to express any opinion on the merits of the pretended appeals filed by this taxpayer on behalf of the nine other stockholders named in his petition "

Section 32. Claims For Refund or Credit. It was early decided by the Board that it had no jurisdiction over an appeal involving only the refund to a taxpayer of a tax paid prior to the passage of the Revenue Act of 1924.[43]

The additional tax in the *Everett Knitting Works* case was assessed, a claim in abatement filed and disallowed and the tax paid, a claim for refund filed, and

[43] Appeal of Everett Knitting Works 1 B T A 5 Dec No 2 Docket No 2, see also Appeal of Alfred B Day, 1 B T A 15, Dec No 10 Docket No 17, Appeal of Milwaukee Gas Specialty Company 1 B T A 22, Dec No 14 Docket No 138, Appeal of Blumah Schwartz, Dec No 35, Docket No 200

rejected by the Commissioner, all prior to June 2, 1924. Reconsideration, however, upon an allegation of additional facts of the rejected claim for refund, resulted in the Commissioner reaffirming his previous action by letter dated June 4, 1924 It was held that, no deficiency existing as defined in Section 273 of the Revenue Act of 1924, there was nothing upon which a determination of the Board could effectively operate The taxpayer was therefore limited to his right of action in court to question the amount of tax alleged to have erroneously been collected

A claim for credit is considered practically of the same nature as a claim for refund [46] The Board has decided that it has not jurisdiction of an appeal based upon the denial by the Commissioner of a claim for credit of taxes paid prior to the passage of the Revenue Act of 1924, where there has been no determination after its enactment that any assessment should be made [47]

Section 33. Claims For Abatement. The Board has held that it has no jurisdiction over cases involving the denial of claims in abatement where such claims are not filed against jeopardy assessments.[48] Thus,

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46 Appeal of J Victor Baron 1 B T A 15, Dec No 11, Docket No 26, Appeal of Joseph Garneau Co, Inc 1 B T A 75 Dec No 43 Docket No 40 (D) The legislative history with respect to Sec 900 of the Revenue Act of 1924, would seem to clearly confirm the intention of Congress not to confer upon the Board the powers or responsibility for the determination of claims for refund, credit or abatement See Congressional Record 68th Congress First Session, May 2, 1924, Vol 65, No 118, pp 7940-7944 See Section 33

47 For the ruling where there has been a determination of deficiency subsequent to June 2 1924 see Section 22, "Where Determination of Deficiency Requires Consideration of Taxes of Other Years"

48 Appeal of Reynolds & Reynolds Company, 1 B T A 275 Dec No 111 Docket No 331 The mere fact that notification of the denial of the claim for abatement was mailed to the taxpayer subsequent to June 2, 1924, is, of course, immaterial

when the petitioner had filed a return for the year 1922 admitting a tax due, and subsequently receiving notice and demand for such tax, filed a claim in abatement prior to the passage of the Revenue Act of 1924, the Board refused to assume jurisdiction.[49] Such refusal was based on the ground that there was no deficiency nor any determination by the Commissioner that an assessment should be made It was held that a denial by the Commissioner of the claim in abatement under such circumstances was not a determination by him that an assessment should be made

Section 34. Jurisdiction to Issue Subpoenas, Order Depositions, and Administer Oaths.[50] Sub-section 1 of Section 900 of the Revenue Act of 1924 provides in part, that

> "For the efficient administration of the functions vested in the Board or any division thereof, any member of the Board may administer oaths, examine witnesses and require by subpœna ordered by the Board or any division thereof and signed by the member (1) the attendance and testimony of witnesses and the production of all necessary returns, books, papers, documents, correspondence, and other evidence from any place in the United States at any designated place of hearing,[51] (2) the taking of a deposition before any designated individual competent to admin-

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[49] Appeal of J Victor Baron, 1 B T A 15, Dec No 11 Docket No 26 For jurisdiction of Board where claims in abatement filed against jeopardy assessments see Section 26 For denial of claims in abatement of additional tax assessed in error and without opportunity to appeal, see Section 25 For discussion of abatement claims in estate tax cases see Sections 13 25, and 26

[50] See also Chapter V, Section 81

[51] Appeal of Gutterman Strauss Co, 1 B T A 243 Dec. No 97, Docket No 234 See Appeal of Richards & Brennan Co, 1 B T A 972, Dec No 358 Docket No 36, and Oesterlein Machine Co vs David H Blair, Commissioner, and the U S Board of Tax Appeals S Ct Dist Col, Docket No E 44155 Book 91, decree issued June 29, 1925, from which an appeal has been noted by the Commissioner

ister oaths under this Act; and (3) the answer in writing under oath, to any question of fact submitted ''[52]

Such authority may be used by the Board to make investigations in particular cases on its own motion, even subsequent to the hearing, for the purpose of determining the correctness of the deficiency

[52] See footnote No 51, p 62

CHAPTER IV

RULES OF PROCEDURE OF THE BOARD OF TAX APPEALS[1]

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[1] It should be noted that the rules stated in this Chapter are subject to change. Rules of evidence are discussed in Chapter V.

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Section 35. Initiation of Appeal—Petition.[2] An appeal is initiated by the filing with the Board of a petition.[3] The petition must be substantially in the form and to contain the following.

(a) A caption in substantially the following form

"UNITED STATES BOARD OF TAX APPEALS

Appeal of .. ..
Address .. .. Docket No .
.. . . .

PETITION"

(b) Proper allegations showing jurisdiction in the Board

(c) A statement of the amount of the deficiency, the tax, the year for which asserted, and the amount thereof (as nearly as may be determined) in controversy

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[2] See Rule 5 of "Rules of Practice," Appendix, p 135

[3] A letter addressed to Commissioner and subsequently filed by him with the Board is not sufficient. See Appeal of M T K Products Co 1 B T A 924 Dec No 338 Docket No 1099 It may be said in general that letters setting out in an informal way the contentions of the taxpayer will not suffice, nor will more formal statements which do not follow the form prescribed by the rules of practice

(d) Clear and concise assignments of error alleged by the taxpayer to have been committed by the Commissioner of Internal Revenue in determining the tax liability of the petitioner, such assignments of error must be numbered

(e) A clear and concise statement of the facts upon which the taxpayer relies as constituting the basis of his appeal

(f) A statement of the propositions of law involved

(g) A verification by the taxpayer.[4]

The petition must be complete in itself, so as fully to inform the Board of the issues to be presented

To the petition there must be appended a copy of the Commissioner's letter advising the taxpayer of the determination of the deficiency (the so-called "sixty-day letter").

Section 36. Form and Style of Papers.[5] All papers filed with the Board may be either printed or typewritten, and if typewritten they must be on one side of the paper only, on paper not more than eight and one-half inches wide and eleven inches long, and weighing not less than sixteen pounds to the ream, folio base, seventeen by twenty-two inches, and fastened on the left side Copies must be legible, but may be on any weight paper. If printed they must be in ten or twelve point type, on good unglazed paper five and seven-eighths inches wide by nine inches long, with inside margin not less than one inch wide, and with double-leaded text and single-leaded quotations Citations should be in italics[6]

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4 It is not enough that the petition be signed and sworn to by the taxpayer it must also contain a verification See also Sec 37

5 See Rule 27 of "Rules of Practice," Appendix, p 140

6 The Board insists that all the specifications be complied with

Section 37. Filing of Petition.[7] Five clear copies of the petition, either printed or typewritten as provided in Rule 27, must be filed The original must be signed by the taxpayer, or his counsel, and duly verified by the taxpayer. Signature of counsel must be in individual and not in firm name The filed copies of the petition should conform to the original

The appeal is filed when the petition is received by the Board.[8]

Where the taxpayer is absent from the country, or for unavoidable reasons stated in the petition is unable to verify the petition, the petition should be sworn to by his duly authorized attorney on information and belief, and filed within the 60-day period specified in the Act. A petition properly verified by the taxpayer may, with the consent of the Board, be substituted therefor at as early a date thereafter as possible

Section 38. Service on the Commissioner of Internal Revenue.[9] The Board, upon the receipt of the petition, serves one copy thereof upon the Commissioner of Internal Revenue forthwith

Section 39. Docket[10] Upon receipt of the petition by the Board the appeal is entered on the docket and assigned a number and the taxpayer or his representative notified thereof This number must appear upon all papers thereafter filed in the case

Section 40. Answer.[11] After service of the petition upon him, the Commissioner has twenty days within

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7 See Rule 6 of "Rules of Practice" Appendix, p 136
8 For rulings of the Board as to its jurisdiction on appeal filed after 60 days from the deficiency notice, see Sec 21
9 See Rule 7 of "Rules of Practice" Appendix, p 136
10 See Rule 8 of "Rules of Practice," Appendix, p 136
11 See Rule 9 of "Rules of Practice," Appendix, p 136

which to file an answer or to move in respect of the petition The answer must be so drawn as fully and completely to advise the taxpayer and the Board of the nature of the defense [12] It must admit or deny each material allegation of fact contained in the petition and set forth any new matters of fact and propositions of law upon which the Commissioner relies [13]

Five copies of the answer are filed, of which the original is signed by the Commissioner or his counsel and the copies conformed.

Section 41. Amended and Supplemental Pleadings [14] Amended and supplemental pleadings may be filed only upon leave granted. Where, however, the appeal has been filed and a motion made to dismiss for insufficiency, the taxpayer may not, by setting up facts which occurred subsequent to the filing of the original pleading so vary its ground of appeal by the filing of an amended pleading as to present an entirely new and different issue.[15]

A motion to amend the answer may even be made

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[12] The Board will permit the Commissioner on motion to withdraw an answer and substitute a motion to dismiss the petition on the ground that the appeal is premature or other grounds affecting the jurisdiction of the Board See Appeal of Wallach & Mayer, Inc, 1 B T A 316 Dec No 124 Docket No 683 This decision was subsequently reversed on the submission of new facts see Appeal of Oakdale Coal Company 1 B T A 773 Dec No 286 Docket No 1252

[13] If the petition states fully the facts upon which the taxpayer relies the admission of the Solicitor in his answer may be sufficient, where no controversy of fact exists to avoid the necessity of further stipulation, some question has been raised as to the right to a determination by default for want of an answer filed by the Commissioner

[14] See Rule 13 of "Rules of Practice," Appendix, p 137

[15] Appeal of Everett Knitting Works 1 B T A 5 Dec No 2, Docket No 2 It was stated therein that in the absence of permission any amended pleadings which are filed will be disregarded

at the time of the hearing [16] A petition may be likewise amended [17] Where the taxpayer filed an amended petition at the time of the hearing pleading its alternative right to special assessment under Sections 327 and 328 of the Revenue Act of 1918, it was stated that since it was determined that the taxpayer was not entitled to the deduction claimed, consideration should be given by the Commissioner to the application for special assessment. The appeal was thereupon restored to the general calendar for further hearing upon the taxpayer's right to special assessment, or such aspects thereof as the parties were unable to agree upon [18] More recently, however, the Board has frequently refused to grant continuances for the purpose either of giving the Commissioner an opportunity to pass on special assessment, or of giving the taxpayer an opportunity to bring in evidence showing abnormality under Section 327 The present attitude of the Board appears to be that if the taxpayer pleads abnormality, it must come into the hearing prepared to substantiate its contention by at least *prima facie* evidence, which necessarily involves not only the situation of the taxpayer, but some evidence of the average tax paid by comparable corporations similarly situated

Section 42. Service of Answer.[19] Upon the filing of the answer the Board serves one copy thereof on

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[16] Appeal of North American Oil & Refining Co, 1 B T A 409 Dec No 150 Docket No 380 Appeal of Eagle Dye Works 1 B T A 638 Dec No 242 Docket No 621, Appeal of Maryland Car Wheel Company 1 B T A 448 Dec No 165 Docket No 534

[17] Appeal of Brighton Mills 1 B T A 392, Dec No 146, Docket No 372

[18] Appeal of Brighton Mills, 1 B T A 392 Dec No 146, Docket No 372

[19] See Rule 10 of Rules of Practice, Appendix, p 137

the taxpayer or his counsel by registered mail, and the return post-office receipt for said answer is proof of the service of the same

Section 43. Joinder of Issue.[20] The appeal is regarded as at issue upon the filing of the answer.

Section 44. Calendar[21]**—Formation of Calendar.** All appeals are placed upon the calendar in the order in which they are at issue, and such appeals stand for hearing and submission in that order upon notice The Board, however, on its own motion or on motion of either party, after due notice thereof, may advance the hearing of appeals whenever considerations of public policy make such action appear desirable.

Suspense Field Calendar. Early in its existence the Board sent to each taxpayer a mimeographed letter advising him of his right to be heard by the Board in the field When requests were made by taxpayers for such hearings, the appeals were placed on a suspense field calendar When a sufficient number of such appeals had been accumulated to justify a division going into the field, a circuit was arranged by the Board. It was decided to send the first appeal division to territory in the Northwest and Pacific Coast sections of the country. Thereupon the field cases were called out and a field calendar made up as to time and place. The taxpayers whose appeals were thus calendared were immediately notified of a specific time and place to appear for hearings

Notice of Hearing. When an issue is joined the Board gives written notice of such fact by mail to all

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20 See Rule 11 of "Rules of Practice," Appendix, p 137
21 See Rule 15 of "Rules of Practice," Appendix, p 137

parties Notice as to the probable date of hearing will be given to all parties by the Board, either in conjunction with notice of joinder of issue or otherwise, at least fifteen days in advance of the date specified.

Calendar Call. The Board convenes at 10 o'clock a m on each hearing day, but the calendar is called by the Chairman at 9 30 a. m each day (except Fridays and Saturdays).

Section 45. Hearings.[22] Hearings are held at such times and places as are from time to time fixed by the Chairman

Assignments of Hearings[23] The assignments of appeals are made by the Chairman on each day of session for hearing on that day. Such assignments may be made without regard to the numerical arrangement of the appeals on the calendar.

Parties appearing on the day set for hearing on the calendar should be present promptly at 9:30 a. m, when the calendar is called, and respond when their case is reached Note is taken of the appearances and readiness of the parties to go forward with the appeals The appeals in which issue is joined on motions of one kind or another are separated from those cases in which issue is joined on the merits The appeals, involving motions, are all assigned to one division for disposition The cases which are for hearing on the merits are then assigned for hearing to the divisions in the order of their appearance on the Day Calendar. One appeal is assigned to each divi-

[22] See Rule 17 of "Rules of Practice," Appendix, p 138
[23] See Rule 16 of "Rules of Practice," Appendix, p 138

sion sitting The remaining appeals which have been announced as ready are held in abeyance and are thereafter assigned to divisions in the order in which they appear on the Day Calendar and as the divisions become vacant. Cases are seldom held over until the next day If a case cannot be assigned to a division when called, by reason of other cases being disposed of, counsel should remain in the building and will be later notified by messenger from the Secretary's office of the division and hour of hearing set by the Chairman

Section 46. Extensions of Time.[24] Continuances, extensions of time, and adjournments may be ordered by the Board on its own motion, and may be granted by it in its discretion on motion of either party filed in writing and stating the reasons therefor.[25]

Section 47. Dismissal for Nonprosecution.[26] The Board may at any time after the joinder of issue, upon motion of either party or upon its own motion, order any appeal to be brought on for hearing, and may dismiss the same for nonprosecution if, when the appeal is called, the taxpayer does not show cause against such dismissal. The provisions for dismissal in cases of appeals coming on for hearing in regular course are discussed in the following paragraph.

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24 See Rule 12 of "Rules of Practice," Appendix, p 137

25 Motions for such purposes made by the taxpayer should state if obtainable the assent thereto by the Solicitor of Internal Revenue The Board may order a hearing continued pending a reëxamination and audit of taxpayer's books agreed upon, see Appeal of Harry and Kate Canaan 1 B T A 720, Dec No. 268, Docket No 304 See also Sec 62, but see Appeal of Estate of Emily Wood, 1 B T A. 957, Dec No 350, Docket No 696, in which the Board stated, "In justice to taxpayers prepared to prosecute their appeals, the Board may not permit its calendar to be encumbered by taxpayers who by themselves or through their counsel adopt dilatory tactics to delay the hearing of their appeals"

26 See Rule 15 of "Rules of Practice," Appendix, p 137

Section 48. Submission Without Argument[27] An appeal in which issue has been joined and in which no issue of fact is raised, or a contested motion not predicated upon an issue of fact, in which both parties are not present in person or by counsel at the time it is called for hearing is regarded as submitted on the part of the absent party or parties[28] Where there is a joinder of issue on questions of fact the provisions of this rule relative to submission without argument shall not relieve the party upon whom rests the burden of proof, of adducing at the hearing proper evidence in support of his contention Pleadings do not constitute evidence and where issues of facts are joined, failure to adduce supporting evidence will be taken as ground for dismissal[29] It should never be assumed by the taxpayer that the Board will disregard a general denial by the Commissioner and will accept as facts those not clearly proven All allegations not admitted by the Commissioner, either in his answer or by stipulation, must be proven by the petitioner

Motions have been frequently made to the Board to vacate dismissal orders under this rule with request that the appeal be restored to the calendar for trial or rehearing, or to permit the taxpayer to come

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[27] See Rule 18 of "Rules of Practice" Appendix, p 138, see also cases cited as to "Burden of Proof" Section 62

[28] See Appeal of Mrs. Charles F Dean Executrix 1 B T A 27, Dec No 19 Docket No 88 wherein it was stated that since the taxpayer did not appear and no evidence was submitted, the appeal could be decided, therefore, only upon the facts which were alleged in the petition and admitted in the answer of the Commissioner, see also Appeal of Fred Warne & Co, Ltd, 1 B T A 1097, Dec No 418, Docket No 2353

[29] In Appeal of R A Musser, 1 B T A 278, Dec No 114 Docket No 441 the taxpayer in his letter alleged the receipt of a deficiency letter The taxpayer not having appeared at the hearing and no evidence submitted, the appeal was dismissed on the denial of the Commissioner that a deficiency letter was mailed to the taxpayer prior to the filing of the appeal

in and prove his case theretofore neglected in this particular. It is not the policy of the Board to do this in any but exceptional cases

Section 49. Motions.[30] Motions must be in writing and five copies filed with the Board The Board will serve one copy thereof upon the adverse party. Motions consented to or which indicate by indorsement thereon that they are not objected to by the opposite party may be acted upon by the chairman Contested motions may be acted upon by the chairman or they may be referred by him to the Board or to a division or a member of the Board.

Section 50. Briefs.[31] Briefs should conform in size and style to the provisions of Rule 27 If typewritten, five copies should be filed, if printed, twenty copies

A brief filed by a taxpayer[32] should contain, in the order here stated

(a) A statement of the nature of the tax and how the appeal comes before the Board

(b) A concise statement of the facts

(c) A concise statement of the points upon which the taxpayer relies.

(d) The argument.

A brief for the Commissioner of Internal Revenue should be in similar form except that no statement of the nature of the tax or how the appeal comes before the Board is required, and no statement of facts unless that presented by the taxpayer is controverted

Every brief of more than twenty pages should con-

30 See Rule 21 of "Rules of Practice" Appendix, p 139

31 See Rule 25 of "Rules of Practice," Appendix, p 139

32 This should be submitted at time of hearing unless the Board sets a subsequent date at which the brief may be filed Request to file supplementary brief should be made at hearing

tain on its front fly leaves a table of contents with page references, supplemented by a list of all cases referred to, alphabetically arranged, together with reference to pages where the cases are cited

One copy of each brief filed will be delivered by the Board to the opposite party

Section 51. Findings of Fact.[33] At the conclusion of the hearing of an appeal before the Board, or a division thereof, both parties must present to the Board, or the division before which such appeal was heard, proposed findings of fact

Such proposed findings of fact should contain a statement of the findings desired, in the form of distinct numbered propositions of the facts which it is desired be found; and each proposition must be so prepared with respect to its length, subject matter, and phraseology that the Board, or a division thereof, may conveniently pass upon it, and they must be so arranged as to present a concise statement in orderly and logical sequence of the whole case as it is desired to have it appear in the findings of fact.

Five copies of such proposed findings must be filed with the Board

Upon the filing of the proposed findings of fact notice of such filing, together with a copy of the proposed findings of each party, will be served upon the opposite party by the Board Within five days after the receipt of such notice of filing of proposed findings each party may file objections to the proposed findings wherein he should point out specifically such objections to such proposed findings, or any part

[33] See Rule 26 of "Rules of Practice," Appendix, p 139

thereof, as he may desire, at the time of filing such objections, either party may request such additional findings as he may desire to have appear in the findings of fact

Board's Findings Prima Facie Evidence of Facts As the Statute specifically provides[34] that the findings of the Board shall be *prima facie* evidence of the facts found before any court of record, it is compulsory upon the Board to make such findings Accordingly it must base its conclusions upon the record and evidence brought out at the hearings

Section 52 Statement of Final Determination [35] Where the taxpayer and the Commissioner have agreed by stipulation or otherwise upon the items in issue the Board may order the deficiency computed accordingly and that the final decision of the Board be settled on consent or on a given number of days' notice by either party [36] Or the Board may make a decision directing the recomputation of the deficiency in an indicated manner If the parties are unable to agree upon the facts necessary to a computation and the calculation of the deficiency in accordance with the opinion rendered by the Board, it will upon motion for final settlement of its determination, receive evidence on the items in dispute [37]

Where the deficiency is ordered to be settled in accordance with the opinion of the Board the procedure is as follows (1) The parties may stipulate

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[34] Revenue Act of 1924, Section 900 (g)

[35] See Rule 50 of "Rules of Practice," Appendix p 145

[36] See Appeal of Wilbert J Austin 1 B T A 18 Dec No 12, Docket No 82 Interlocutory decision affirmed upon filing of stipulation in Dec No 28 Docket No 82

[37] Appeal of Even Realty Company 1 B T A 355, Dec. No 137, Docket No 269

that the deficiency shall be determined at a stated amount, and file the stipulation as the basis of a final determination on consent (2) Either party may prepare a proposed determination, showing the basis and method of its computation and file five copies thereof with the Board, accompanied by a notice that it will be presented to the Board for settlement on a stated day (other than a Friday or Saturday) not sooner after filing than the number of days allowed in the Board's decision The Board will serve one copy upon the adverse party and the latter shall show cause before the Board, by filing before the day stated in the notice, five copies of an alternative proposed determination (with the reasons and computations) Failure so to propose an alternative determination will be treated as a consent to the proposed determination of the adverse party theretofore filed, and an order settling determination of tax accordingly will be entered by the chief of the division from which the decision emanated Determinations noticed for settlement and contested will be called in the regular daily calendar call of the Board, and will be assigned by the chairman to the divisions from which the decision emanated for disposition on the papers filed or after a hearing, as the situation may require. A personal appearance is not necessary to bring about consideration of a proposed determination that has been filed If a proposed determination is received from only one party and the adverse party fails to file an alternative proposed determination, the determination will be settled in accordance with the proposal filed.

The rule is applicable substantially as follows [8] If the parties are unable to stipulate that the deficiency shall be determined at a stated amount either party may prepare a proposed determination showing the basis and method of computation *This proposed determination should be accompanied by a notice of presentation* advising the Board and adverse counsel that he will present it for settlement before the Board on a stated date The date is to be selected by the Counsel, not by the Board, but the date so fixed must be at least as many days later than the date of filing of the notice and proposed determination as is indicated in the decision of the Board under which the determination is being made An example of such a notice would be:

"Appeal of John Doe Docket No 000

NOTICE OF SETTLEMENT

The annexed proposed determination will be presented to the Board of Tax Appeals for settlement on January 7, 1925

Yours, etc,

Dated, December 27, 1924 Richard Roe,
Counsel for Taxpayer.

To the Board of Tax Appeals,
Earle Bldg
Washington, D C"

Section 53. Review of Decisions of Division by Entire Board It was provided by the Revenue Act of 1924, [8a] with reference to the Board of Tax Appeals,

[8] See statement of Chairman Hamel, issued under date of Feb 1 1925 as amended by the Amendment to Rule 50, made Feb 25, 1925

[8a] The Revenue Act of 1924, Section 900 (f)

that upon the expiration of thirty days after a decision by a division to which an appeal had been assigned such decision and findings of fact made in connection therewith should become the final decision and findings of the Board, unless within such period the Chairman directed that such decision should be reviewed by the Board. This provision has been commonly referred to as the "30-Day Rule."

For the purpose of securing uniformity of opinions and rulings of the various divisions of the Board, the Chairman has, from the inception of the Board, within thirty days from the date of a division decision, directed that such decision and findings be reviewed by the Board.

There have been some few instances in which the taxpayer, after notification of an adverse decision by the Board, has sought to have a review by the whole Board, seeking thereby to secure an appeal to the Board from the division decision. The Board, however, has refused to acknowledge the right to such appeal. Its objection to the allowance of such an appeal is that such construction of the statutory provision above quoted would mean that both the taxpayer and the Government could have two hearings in the Board of Tax Appeals in every case. It was felt that Congress was only making provision for a uniformity of decision by permitting the Chairman to direct any or all opinions for the consideration of the whole Board. It is reasoned that the term "review" does not mean a new hearing or reargument. The provisions of the statute are therefore satisfied where the decision of the division has been reviewed

by the entire Board The statute having been complied with, there is no right of the taxpayer to demand another or further review or hearing by the Board. The decision and findings announced as the result of the review by the entire Board become the opinion of the Board

Procedure of Review Adopted by Board When an appeal has been heard and finally submitted, i e, when all briefs or other data, time for the filing of which has been granted, have been received, the division hearing the appeal takes it under advisement The members of the division discuss the appeal, and the record and briefs submitted, at one or more conferences When a decision has been reached, the appeal is assigned to one of the members of that division for writing up the findings, decision and opinion, if an opinion is required or considered necessary. If there is any disagreement among the division members, one of the dissenting members is assigned to write up the views of the members in disagreement When such opinion or opinions are prepared, typewritten copies of them are distributed among the members of the division for critical review. Further conference or conferences are held, and changes of form as well as substance are made A vote is then taken in the division on the acceptance of the prepared opinion, or such opinion with the changes suggested A majority vote brings about the adoption of the decision as a "division decision" It is given a stamped date as of the day of its adoption by the division. The decision is immediately sent to the mimeograph room of the Board, where fifteen

copies are made—one for each member of the whole Board. If a member or members of the division still dissent from the division decision, as adopted, a decision representing his or their view is likewise mimeographed and circulated to all the members of the Board. The Board meets in full conference on Friday and Saturday of each week. During the customary period of a week to ten days between the mimeographing of the division decision and the review of such decision by the entire Board, each member of the Board studies the division decisions circulated. At the Board meeting, the division decisions coming before it are discussed at such length as the importance of the particular decisions warrant. At the conclusion of the discussion, a motion to adopt is voted upon. It is not unusual for decisions to be sent back to be rewritten, with a view to reaching the proper result as the Board sees it. When the Board has reached a decision in an appeal, a certified copy thereof is sent to the taxpayer and likewise one to the Commissioner of Internal Revenue.

Section 54. Business Hours.[39] The office of the Board at Washington, D. C., will be open each business day from 9 o'clock a. m. to 4:30 o'clock p. m.

Section 55. Admission to Practice.[40] A register of persons entitled to practice before the Board will be maintained by the Board in which will be entered the names of all such persons. Firms will not be admitted or recognized.

The following classes of persons whom the Board

[39] See Rule 1 of "Rules of Practice," Appendix, p. 134.
[40] See Rule 2 of "Rules of Practice," Appendix, p. 134.

finds, upon consideration of their applications, to be of good moral character and to possess the requisite qualifications to represent others may be admitted to practice before the Board:

(a) Attorneys-at-law who are admitted to practice before the Supreme Court of the United States or the highest court of any State or Territory or the District of Columbia

(b) Certified public accountants duly qualified under the law of any State or Territory or the District of Columbia

An application under oath for admission to practice should be addressed to the United States Board of Tax Appeals, Washington, D. C., and must state the name, residence, address and business address of the applicant, and the time and place of his admission to the bar, or qualification as a certified public accountant. Such application should also state whether the applicant has ever been suspended or disbarred as an attorney in any court, or his right to practice as a certified public accountant suspended or revoked in any jurisdiction. Such application should be accompanied by a certificate of the clerk of the court in which the applicant is admitted to practice to the effect that he has been so admitted and is in good standing, or a certificate by the proper State, Territorial or District authority to the effect that the applicant is a certified public accountant in good standing, duly qualified and entitled to practice in such State or Territory or the District of Columbia.

The Board may, in its discretion, deny admission, suspend or disbar any person who it finds does not possess the requisite qualifications to represent others,

or is lacking in character, integrity or proper professional conduct.[41] An attorney or certified public accountant who has been admitted to practice may be disbarred only after he is afforded an opportunity to be heard.

The Board shall have the right at any time to require a statement under oath of the terms and circumstances of any contract of employment of an attorney or certified public accountant with the taxpayer he represents.

Any individual taxpayer or member of a taxpayer partnership may appear for himself or such partnership upon adequate identification to the Board. A taxpayer corporation may be represented by a bona fide officer of the corporation upon permission granted, in its discretion, by the Board or the division sitting.

Section 56. Computation of Time—Sundays and Holidays.[42] When the time prescribed by these rules for doing any act expires on a Sunday or a legal holiday in the District of Columbia, such time should extend to and include the next succeeding day that is not a Sunday or such legal holiday.

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41 The authority of the Board to make and enforce reasonable rules for the admission of persons to appear before it as agents and attorneys has been upheld by the Court of Appeals of the District of Columbia. The Court affirmed on March 2, 1925, a decision of the Supreme Court of the District, in the case of Goldsmith v. United States Board of Tax Appeals, dismissing a petition for a writ of mandamus to compel the Board to enroll the petitioner as attorney.

In this case, the Court of Appeals, after sustaining the right of the Board to make and enforce reasonable rules for admission to practice, stated that the real question was whether there had been an abuse of discretion, or an arbitrary exercise thereof by the Board, and held that no such abuse was shown.

This case also involved a ruling by the Board that a person barred as an attorney for the taxpayer may be refused admission to appear as an officer of the taxpayer company.

42 See Rule 44 of "Rules of Practice" Appendix, p. 145. See however, the rule applicable to the filing of petitions, Section 37.

Section 57. Reports of Board and Evidence as Public Records. All reports of the Board and its divisions and all evidence received by the Board and its divisions (including, in cases where the oral testimony is reduced to writing, the transcript thereof) shall be public records open to the inspection of the public [43]

Publication of Reports The Board shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof.[44]

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43 Revenue Act of 1924, Section 900 (h)
44 Ibid

CHAPTER V

RULES OF EVIDENCE OF THE BOARD OF TAX APPEALS

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Section 58. Introductory. No rules of evidence are prescribed for the Board of Tax Appeals by the Revenue Act of 1924 It is specifically provided therein[1] that the proceedings of the Board and its divisions shall be conducted in accordance with such rules of evidence and procedure as the Board may prescribe. The law also provides[2] that the Board shall have a seal which shall be judicially noticed.

Under the authority granted it the Board has not attempted to apply with too great strictness technical rules of evidence in proceedings before it. In each case the Board seeks the facts germaine to the issue

1 Revenue Act of 1924, Section 900 (b)
2 Revenue Act of 1924, Section 900 (d)

Within reasonable limits the manner or means by which the witness becomes possessed of the knowledge is not material. Since there is no provision for direct appeal from the Board's decisions to an appellate body, exceptions to the testimony of a witness will be entertained in most instances for the purpose of determining the weight rather than the admission of the testimony In short, in cases before the Board a liberal policy has been adopted with respect to the rules of evidence, where the competency of the witness or the nature of the testimony is involved, and as long as the litigant keeps within the general Common Law rules of evidence, even though liberally applied, no objection is likely to be sustained [3] Where no rules have been specifically formulated by the Board, a party appearing before it could undoubtedly feel assured that the evidence offered would be admitted provided such submission were made in accordance with the Common Law rules of evidence In hearings before the Board the stricter rules of evidence obtaining in a court of law are relaxed and the rules of evidence observed are more nearly those followed in courts of equity.

The Board has, however, experienced considerable difficulty in attempting to enforce stricter rules for the admission of evidence than exist in the hearing of cases before the Bureau of Internal Revenue. Tax-

[3] The Board would undoubtedly feel itself bound as a creature of Federal Statute to follow the principle that in the absence of statute the common law rules of evidence should govern See Moore v United States, 91 U S 270, in which the Supreme Court laid down the rules by which the Court of Claims should be guided in accepting and rejecting evidence before it, which rules of evidence in the absence of Congressional provision, were as found in the Common Law

payers have frequently found themselves unprepared to submit the data in support of their contentions in a form suitable for admission In such cases the Board has either dismissed the petition,[4] or admitted the evidence for what it was worth, or continued the hearing to permit the submission of additional evidence[5] The fact that the proceedings of the Board are to some extent informal, and that the Board has not specifically framed rules covering all the law of evidence does not warrant reliance by the taxpayer or his representative on any proof less than that which would be acceptable under the Common Law rules. In one case before the Board[6] the taxpayer offered to prove his claim by absolutely incompetent evidence, such as alleged transcripts from the books of the corporation without the production of the books, or the custodian of the books, or of the person who made the transcript, by the conclusions of an accountant who had examined them and had been told certain things by officers of the taxpayer, and by the conclusions of a revenue agent which had not been accepted by the Commissioner It was necessary for the Board to exclude this evidence as incompetent with the result that the taxpayer wholly failed to prove its contentions and the Board was in a position

4 See Appeal of Briggs Hotel Company, 1 B T A 649, Dec No. 244, Docket No 1068, in which the only evidence offered was a copy of the auditor's report, which was excluded See Appeal of Lee Sturgess, Adm Estate of L H Sturgess, d'c'd, Dec No 530, Docket No 2279

5 The early decisions should be read with some caution, since the rules therein expressed were based on a policy of allowing considerable freedom in the introduction of evidence during the first few months of the Board's existence, but the present tendency is not to grant continuances for obtaining admissible evidence See case last cited

6 See Appeal of Elmer E Scott Company, 1 B T A. 445, Dec No 164, Docket No 530

to make but few findings of fact It was held that upon the record the taxpayer had failed to show error on the part of the Commissioner and his determination was therefore necessarily approved.

The rules specifically relating to evidence as already promulgated by the Board are numbered 30, 31, 32, 33, 41, and 42. These rules are discussed in the following paragraphs. Consideration is also given to rules informally expressed in decisions handed down from time to time In the following chapter there is also set out a discussion of the more general rules of evidence applicable, and the proper manner of presenting such evidence.

Section 59. Limitation of Evidence by Pleadings. The taxpayer is usually permitted to introduce any evidence which may tend to show what he has alleged to be the facts, and the rules concerning the evidence admissible under the pleadings will be applied in proceedings before the Board in the manner hereafter described Likewise the Government is not bound strictly by the defenses pleaded. This does not mean that evidence not germaine to the controversy may be introduced, nor does it mean that evidence introduced for one purpose is admissible for another. Moreover the statements and pleadings should be made inclusive to permit of all the issuable facts.

The Board stated in a case recently decided:[7]

> "The taxpayer not having set forth the three last named errors either in the enumeration of errors from which it took the appeal, or in the

[7] Dixie Manufacturing Co, 1 B T A 641, Dec No 243, Docket No 475 (A)

facts set forth in its petition, and not having amended its petition or offered to do so, such alleged errors will not be considered in connection with this decision The Board is, moreover, justified in its adherence to the pleadings by the failure of the evidence presented to convince the Board that the Commissioner erred in any of these points ''

Section 60. Bill of Particulars. With reference to requiring a petitioner to file a bill of particulars it should be observed that the office of a bill of particulars is to obtain a more detailed specification of matters set forth in the pleadings Its purpose is generally twofold: (1) to limit the proof and scope of inquiry at the trial, and (2) to prevent surprise It was stressed by the Board in one case[8] that the Commissioner will not be allowed through the instrumentality of a request for a bill of particulars, to secure information with which to combat the evidence likely to be presented by the taxpayer, except in so far as this latter object might in some respect be accomplished indirectly by the use of a bill of particulars for its proper purpose

Section 61. Presumptions Although no decision has expressly so held, the Board has apparently impliedly acknowledged a presumption of taxability in favor of the Commissioner. The Commissioner need only frame the issue so as to deny the specific grounds for relief advanced by the petitioner[9]

A taxpayer's books will generally be considered as

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8 Appeal of Gutterman Strauss Co., 1 B T A 243, Dec No 97, Docket No 234

9 See Record of Proceedings in the case of Appeal of John H Parrott, 1 B T A 1, Dec No 1, Docket No 1

prima facie evidence of the facts contained therein For example, the Board has held that they will be accepted as reflecting the true earned surplus unless the Board has before it affirmative evidence which warrants it finding as a matter of fact that the surplus is not correctly reflected therein [10]

Section 62 Burden of Proof The burden of proof before the Board is on the taxpayer petitioning The rules of the Board provide that upon hearing of appeals the taxpayer shall open and close the case and the burden of proof shall be upon him [11] Where there is no evidence, or the evidence submitted is insufficient to sustain the allegations, the Board will order that the determination of the Commissioner shall stand [12] The Commissioner is under no necessity of submitting evidence unless the taxpayer has constructed a *prima facie* case [13]

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10 Appeal of Rub-No-More Co, 1 B T A 228, Dec No 91, Docket No 57 (A) See also Section 68, "Book Entries"

11 See Rule 20 of "Rules of Practice," Appendix, p 138 But see Sec 83, Chap VI

12 Appeal of M Kline, 1 B T A 102 Dec No 53, Docket No 252, Appeal of S & G Hotel Supply Co 1 B T A 200, Dec No 82 Docket No 175, Appeal of Lowell Cotton Mills, 1 B T A 403, Dec No 120 Docket No 453, Appeal of Elmer E Scott Co, 1 B T A 445 Dec No 164, Docket No 530 Appeal of Gaukler & Stewart, 1 B T A 578, Dec No 213, Docket No 62, Appeal of Whitney Duplicating Check Co, 1 B T A 1028 Dec No 388, Docket No 1801, Appeal of Bonta Narragansett Realty Corporation, 1 B T A 208, Dec No 85, Docket No 34, Appeal of Bank of Watertown, Dec No 456, Docket No 812 Other numerous decisions of the Board dismissing appeals for lack of evidence are not cited here since they are primarily concerned with the substantive law See also following paragraph

13 See Appeal of Cleveland Home Brewing Company, 1 B T A 87, Dec No 47 Docket No 73 (A), Appeal of J M Lyon, 1 B T A 378 Dec No 141, Docket No 81 As stated in Chapter III the original nature of the Board's jurisdiction requires that the evidence introduced before any other department of the Government must be reintroduced before the Board in order that it may be given consideration Compare the decision in the case in Appeal of Bruce & Human Drug Company, 1 B T A 342, Dec No 131, Docket No 129 (A) In that case although the Board stated that both an audit made for taxpayer and submitted by it together with supporting depositions and the audit of the examining revenue agent submitted by the Commissioner, which apparently was the only evidence before it were both inadequate and unreliable, it was satisfied from the entire record that the proposed deficiency should be disallowed

What constitutes proof of fact is a matter beyond exhaustive treatment in this book It has, however, been pointed out[13a] that the following do not constitute such evidence. (1) The petition, (2) statement of counsel; (3) unidentified and unauthenticated documents and letters, (4) rulings of the Bureau of Internal Revenue, (5) affidavits which have not been submitted to the Solicitor and agreed by him to be submitted as evidence, (6) balance sheets, valuation appraisals and mathematical computations of various kinds, unsupported by proof of the facts they contain. Introduction of such evidence carries with it the right of the opposing party to cross-examine a witness to test his qualifications to testify, and to establish the facts on which such conclusion and opinion is predicated, (7) Briefs and written argument filed by taxpayer.

While the above enumeration does not, of course, exhaust the matters which do not properly constitute evidence, they represent items which the Board has found in its experience to be most generally misunderstood.

Continuance of Hearing Cases may be continued and returned for further evidence on particular points and a reexamination of taxpayer's books when circumstances warrant [14] Decisions may be suspended temporarily to permit the parties to adjust, recompute or compromise issues in accordance with the Board's

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13a The following references were made in the very instructive address of Chairman Korner of the Board of Tax Appeals before the American Institute of Accountants on May 23 1925

14 Appeal of Harry and Kate Canaan, 1 B T A 720, Dec No. 268, Docket No. 304 (A).

directions,[15] or to permit the Commissioner to pass on the question of special assessment where opportunity was not previously afforded.[16] Thus, the Board has held that it will determine the deficiency, if any, to be assessed upon revised computation by the Internal Revenue Bureau which should be submitted by the Commissioner after due notice to the taxpayer or upon stipulation or upon rehearing to be set upon motion of either party.[17]

In this connection, however, it should be noted that the Board is becoming more reluctant to continue cases for further evidence, and that its present inclination is to take the case under submission and then rule against the petitioner for failure to prove its allegations, granting no continuances after the opening of the case.

Submission Without Argument. Where the taxpayer or his counsel fail to appear at the hearing or submit any evidence to substantiate the allegations of the petition, the appeal may be decided upon the facts alleged in the petition and admitted in the answer.[18] Pleadings do not constitute evidence, and

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15 Appeal of Oppenstein Bros., 1 B. T. A. 259, Dec. No. 103, Docket No. 117. Where decision is thus suspended the Board will, if necessary, upon motion receive further evidence on the phase of the case causing the suspension, see Appeal of Winthrop Ames, 1 B. T. A. 63, Dec. No. 39, Docket No. 12. Where one continuance has been granted to enable the taxpayer to submit additional evidence, a second extension will not generally be granted, see Appeal of Bonta Narragansett Realty Corporation, 1 B. T. A. 208, Dec. No. 85, Docket No. 34.

16 Appeal of Producers' Fuel Co., 1 B. T. A. 202, Dec. No. 84, Docket No. 159. See also Section 41, 'Amended and Supplemental Pleadings.' But see Chapter IV, Sec. 48.

17 Appeal of William C. Sampson, 1 B. T. A. 73, Dec. No. 41, Docket No. 204 (A), Appeal of Dwight & Lloyd Sintering Company, Inc., 1 B. T. A. 179, Dec. No. 77, Docket No. 120.

18 Appeal of Mrs. Charles F. Dean, Executrix, 1 B. T. A. 27, Dec. No. 19, Docket No. 88.

where issues of fact are joined, failure to support the pleadings by proper or sufficient evidence will be taken as a ground for dismissal [19]

Special Assessment Cases The Board stated, in discussing a case before it requesting special relief, that while it takes jurisdiction of such cases, it does not follow that the "relief sections" of the statute are to be applied any more loosely or with any greater laxity of proof than any other provisions of the statute [20] A number of petitions asking for special relief under Section 210 of the Revenue Act of 1917 and Sections 327 and 328 of the Revenue Acts of 1918 and 1921 have been dismissed for lack of evidence in support of claim for such relief The Board has held that the abnormalities entitling to special relief must be proven by competent evidence. It must also be evidenced that consideration under the section above cited would afford relief.[21]

Several cases have also arisen in which the taxpayer has objected to special relief claiming that its

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[19] Rule 18 of "Rules of Practice", see Appendix, p 138 See also discussion of this subject in Chapter IV, Sec 48

[20] Appeal of Chalmers Publishing Company 1 B T A 629, Dec No. 237, Docket No 839 In this case the Board stated that it will not countenance the practice of seeking special assessment as a last resort, the taxpayer hoping thereby to secure a reduction not otherwise available, and not proving clearly the existence of factors under Section 327 Insley Manufacturing Company, 1 B T A 1029, Dec No 389, Docket No 443

[21] Appeal of M Kline 1 B T A 102, Dec No 53, Docket No 282, Appeal of S & G Hotel Supply Company 1 B T A 200, Dec No 82, Docket No 175, Appeal of Lowell Cotton Mills, 1 B T A 303, Dec No 120, Docket No 453, Appeal of Huff Andrews & Thomas, 1 B T A 542 Dec No 197, Docket No 336 (A), Appeal of Winifrede Coal Company et al, 1 B T A 566 Dec No 209, Docket No 311, Appeal of Gaukler & Stewart, 1 B T A 578 Dec No 213, Docket No 62, Appeal of Jamestown Worsted Mills 1 B T A 659 Dec No 247, Docket No 92 (A), Appeal of Gottlieb Bros 1 B T A 684 Dec No 257, Docket No 887 (A) The Commissioner is not estopped by the fact that he had previously allowed special assessment, since such allowance may have been entirely unfounded, see Appeal of Chalmers Publishing Company, 1 B T A 629 Dec No 237 Docket No 839

invested capital could be satisfactorily determined, which claim the Treasury Department denied In two cases where considerable evidence of value of intangible assets was offered by the taxpayer for the purpose of determining invested capital, the Treasury Department having stated its inability to satisfactorily compute it, it has been held that the taxpayer had at least established a *prima facie* case, as to the values claimed by it, especially where the Commissioner has offered no evidence [22]

Section 63. Stipulations. Wherever possible, it has been the practice to stipulate the facts and reserve only questions of law for presentation before the Board Stipulations should be in writing and filed with the Board,[23] but with the Board's permission may be presented orally at the hearing The Board desires that facts be thus stipulated in so far as and whenever practicable Each stipulation should be complete and should not leave essential points to conjecture. Where a stipulation of fact has been entered into, oral testimony in contradiction thereof will be disregarded [24] The Commissioner and the taxpayer have in many cases entered stipulations of record, showing an agreed deficiency in tax which the Board has accepted as the basis of its decision Likewise where the Commissioner files an admission that no deficiency is due the appeal will be sustained [25]

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[22] Appeal of Brownsville & Matamoros Bridge Co 1 B T A 320, Dec No 126, Docket No 93, see also Appeal of Whitney-Roth Shoe Co 1 B T A 451 Dec No 171, Docket No 89 (A)

[23] Rule 30 of Rules of Practice', see Appendix, p 140

[24] Appeal of Consolidated Asphalt Company 1 B T A 79 Dec No 44 Docket No 124, Appeal of Union Metal Mfg Co, 1 B T A 395 Dec No 147 Docket No 35 (A)

[25] Appeal of Fitchburg Steam Engine Company 1 B T A 242, Dec No 95, Docket No 433 (A), Appeal of Proprietors of Locks

Parties should be diligent in preparing their stipulations promptly after joinder of issue for the reason that the Board is becoming more reluctant to grant continuances in order that stipulations may be perfected.

Section 64. Order of Evidence.[26] The order of introduction of evidence is substantially that which obtains in Federal courts, the Board being lenient, however, in the exercise of its discretion in the admission of evidence after the petitioner has closed his case. In general, the petitioning taxpayer, on whom rests the burden of proof, should introduce in the first instance all his evidence in chief, and then, after the Commissioner has introduced all his evidence in chief, he will be confined to rebuttal evidence

The Board will generally not interfere to control a party as to the order of proof in support of his case in chief, but will allow him to prove the facts in the order in which he prefers. Where, however, competency of any matter as testimony depends upon proof of certain facts, such proof should be offered before or with the testimony, or some assurance be given the Board that the necessary foundation will be established.

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and Canals on Merrimack River, 1 B T A 242, Dec No 96, Docket No 299 (A) The deficiency in tax may be determined by consent of the Commissioner and the taxpayer, see Appeal of Wilbert J Austin 1 B T A 18, Dec No 12 28, Docket No 82 Appeal of Koen Brothers, Inc., 1 B T A 417, Dec No 157, Docket No 712 (A)

For instances in which cases have been settled upon Commissioner's admission see Appeal of Charles J Hedwall Company, Dec No 20 Docket No 167, Appeal of Millard Fairland, Dec No 21, Docket No 213

[26] See in this connection Chapter VI, which discusses the Presentation of Cases Before the Board

Section 65. Documentary Evidence.[27] The following rules have been laid down by the Board regarding the receipt of documentary evidence.

Copy of Parts of Document. Where relevant and material matter offered in evidence is embraced in a book, paper or document containing other matter not material or relevant and not intended to be put in evidence, such document shall not be filed but a copy only of such relevant and material matter shall be filed.

Receipt of Documentary Evidence After Hearing. Where agreed upon by the taxpayer and the Commissioner of Internal Revenue at or after the hearing, the division, if it deems advisable, may receive specified documentary evidence as a part of the record within a time to be fixed by it.

Section 66. Best and Secondary Evidence. The Board has in the past been lenient in the application of the general rule, permitting the introduction of carbon copies, press copies and copies made from duplicates. Under the present attitude of the Board, however, it is usually essential to account satisfactorily for the absence of best evidence on seeking the admission of secondary evidence

Section 67. Admission of Revenue Agent's Report. The Board held in one instance,[28] on objection of counsel for the Commissioner, that an auditor's report was inadmissible, where no original records were offered nor the auditor who prepared the report was

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27 Rule 33 of "Rules of Practice," Appendix, p 141

28 Appeal of Briggs Hotel Co, 1 B T A 649, Dec No 244, Docket No 1068.

called as a witness. In another case,[29] no objection having been made, the deficiency letter and revenue agent's report were admitted in evidence, the accountant and treasurer of the taxpayer corporation having testified

Where a hearing is continued with the understanding that the Commissioner would authorize a reexamination and audit of the taxpayer's books to be made by the Revenue Agent for the district where the taxpayer resides, the report will be subsequently received in evidence upon submission by counsel for the Commissioner.[30]

It may be generally stated, in conclusion, that the Board will rule out a Revenue Agent's report when presented on behalf of the Commissioner and objected to by the taxpayer, unless the Revenue Agent is present for cross-examination However, the Board will probably admit a Revenue Agent's report when presented on behalf of the taxpayer as secondary evidence of the contents of its books (the absence of the original books being accounted for) merely for the purpose of showing the contents of the books, and not for the purpose of considering any conclusions of the Agent

Section 68. Book Entries. Books of account are not more than evidential, being neither indispensable nor conclusive.[31] This rule should not, however, be con-

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29 Appeal of Jamestown Worsted Mills 1 B T A 659, Dec No 247, Docket No 92 (A) See also Appeal of Electrical Supply Co, 1 B T A 658 Dec No 248, Docket No 710 See also Appeal of Estate of Jacob Fish 1 B T A 882, Dec No 320 Docket No 1337

30 Appeal of Harry & Kate Canaan, 1 B T A 720 Dec No 268, Docket No 304 (A) But see Chapter V, Sec 62, "Continuance of Hearing"

31 Doyle v Mitchell, 247 U S 179, Douglas v Edwards, 298 Fed 229, 234, Appeal of Even Realty Company, 1 B T A 355, Dec No 137, Docket No 269, Appeal of Chatham & Phenix National Bank, 1 B. T A 460 Dec No. 174, Docket No 107

fused with the necessity of first establishing such book entries.[31a] It does indicate the necessity of supporting such entries, once admitted in evidence, by evidence of the actual facts which are considered controlling.

To establish its invested capital and to evidence the withdrawals of the partners, the taxpayer introduced photostatic copies of ledger sheets. The evidence so submitted was considered clearly inadequate. It was stated that the ledger sheets were incapable of analysis without reference to journal entries or the knowledge of persons familiar with the amounts. The books of original entry were not introduced in evidence. The persons familiar with the accounts were not produced as witnesses. In lieu of such testimony, counsel for the taxpayer attempted to analyse the ledger sheets and to show the amounts of withdrawals, setting forth such analysis in his brief. The Board held that it was unable to determine whether this analysis is correct by comparison with any of the testimony and evidence in the case.[32]

Section 69. Oral Testimony—Admissibility in Evidence.[33] The division holding a hearing is the sole judge of the relevancy and admissibility of evidence. It is its concern to elicit the material facts.

Section 70. Hearsay. The rules of evidence relating to hearsay testimony as applied by the courts are now being enforced by the Board with few

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31a See Appeal of Spiegel's Housefurnishing Co., Dec. No. 569, Docket No. 2688, relative to minutes of a corporation.

32 Appeal of Gaukler & Stewart, 1 B. T. A. 578, Dec. No. 213, Docket No. 62.

33 Rule 32 of "Rules of Practice," Appendix, p. 141. In connection with the admissibility of evidence, see discussion in Chapter VI.

exceptions. Even where admitted, however, the weight given to it varies according to its reasonableness, the standing of the informer and the probable correctness of the statements by the witness

Section 71. Contradicting Writings by Parole Evidence. The Board has followed the general precedent[34] that the rule against varying or contradicting writings by parole evidence obtains only in suits between and is confined to parties to the writing and their privies, and has no operation with respect to third persons nor even upon the parties themselves in controversies with third persons. The taxpayer may therefore introduce oral testimony to contradict or explain away statements contained in agreements between it and other parties.[35] But as between the parties, while the taxpayer may introduce oral testimony to contradict or explain away statements in agreements, such testimony will be considered by the Board only for what it is worth, and the Board will not shift to the Commissioner the burden of proving affirmatively that the agreements are not what they appear to be on their face.

In the absence of convincing evidence that the intention of the parties thereto was different from that which the instrument purports, e g, a sale, the apparent nature of the transaction must be accepted The intention must be established by clear and con-

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34 Peugh v Davis 96 v J 332, Sigua Iron Co. v Greene, 88 Fed 207, O Shea v New York, N Y C and St L R Co, 105 Fed 559, Mitchell v McShane Lumber Co, 220 Fed 78

35 Appeal of J W Solof, 1 B T A 776, Dec No 288, Docket No 482.

clusive evidence.[36] Parole evidence of conclusions drawn by officers of the taxpayer is not sufficient.[37]

Section 72. Ex Parte Affidavits.[38] Ex parte affidavits will not be received as evidence on disputed questions of fact unless the affidavit is first submitted to the opposing counsel prior to the hearing and his consent to the introduction thereof obtained.[39] Even where permission to submit such evidence is obtained it is evident that such testimony by reason of its nature can not be of great value

Section 73. Oral Depositions. The Revenue Act of 1924 provides that the Board may order the taking of a deposition before any designated individual competent to administer oaths under the Revenue Act of 1924.[40] It is required that the testimony be reduced to writing by the individual taking the deposition and subscribed to by the deponent.[41] The following paragraphs of this section state the rules laid down by the Board in accordance with this authority.[42]

The right of taking depositions is granted by the Board for the convenience of the parties and is not intended as a means of securing continuances Ordinarily the party desiring the deposition must move promptly Where, however, exigencies arise

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36 Appeal of Converse and Company, 1 B T A 742, Dec No 275, Docket No 570, Appeal of Bernard Long, 1 B T A 792, Dec No 292, Docket No 408

37 Appeal of Savoy Oil Company, 1 B T A 230 Dec No 92, Docket No 323

38 See Rule 31 of 'Rules of Practice,' Appendix, p 141

39 See Appeal of Bonta Narragansett Realty Corporation, 1 B T A 208, Dec No 85 Docket No 34 Letters are subject to the same rule The Commissioner may stipulate that the affiants, if present as witnesses, would testify to the matters set forth in their respective affidavits, see Appeal of Kinsman Transit Company, 1 B T A 552 Dec No 202 Docket No 67

40 Revenue Act of 1924, Section 900 (i)

41 As to the right of a witness to refuse to testify see Section 81

42 See Rule 41 of 'Rules of Practice," Appendix, p 142

which make it necessary to file an application to take deposition on the eve of the day set for hearing of the appeal, the particular case will be considered on its merits Where one party allows his adversary to bring witnesses to Washington, or have them on the way, and then files application to take deposition and for a continuance, the application will customarily be denied

Form of Application When either party proposes to take a deposition, a verified application, with two conformed copies should be made to the Board setting forth the following

1 The name and post-office address of the witness whose deposition is proposed to be taken

2 The subject matter or matters concerning which the witness is expected to testify, together with a statement of the reasons why it is desired to take the deposition and why the witness or witnesses should not be required to appear personally and testify at the hearing

3 The time and place of taking the deposition and the name, post-office address and official designation of an individual competent to administer oaths under the Revenue Act of 1924,[1] before whom it is proposed to take the deposition

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[1] In any case where an oath is required in connection with any returns or statements made in accordance with the provisions of any section of the Revenue Act of 1924 or any regulations prescribed by the Commissioner and approved by the Secretary under the provisions of any section of such Act such oath may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State territory or possession of the United States wherein such oath or affirmation is administered or by any consular officer of the United States Section 3165 of the Revised Statutes as amended by Section 1317 of the Revenue Act of 1918 and reenacted without change by Section 1018 of the Revenue Act of 1924 authorizes collectors deputy collectors, internal revenue agents and internal revenue officers as-

Depositions on Application Upon receipt of the proper application by the Board, it will make an order, copy of which will be mailed or delivered to the taxpayer and to the Commissioner of Internal Revenue, or then counsel, wherein the Board will name the witness whose deposition is to be taken and specify the time when, place where, and the officer before whom the witness is to testify, but such time and place and the officer before whom the deposition is to be taken so specified in the Board's order may or may not be the same as those named in the application to the Board

Depositions by Stipulation At any time after issue is joined the parties or their counsel may, by stipulation duly signed and filed with the Board, take the depositions of any witnesses whose testimony they deem material to the issues In such cases the stipulation shall state the names and addresses of the witnesses, the time when, and the place where such depositions will be taken, and the name, address, and official title of the officer before whom it is proposed to take the depositions In such cases no order to take depositions will be issued by the Board, but such

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signed to duty under internal revenue agent to administer oaths in connection with the administration of the internal revenue laws (Reg 65 Art 406)

It has been held in a court decision interpreting the regulations under the 1918 Act that a Commissioner of deeds was authorized to take oaths under the Act See United States v Benowitz 262 Fed 227 The Treasury Department has ruled that the words before an officer duly authorized to administer oaths either by the laws of the United States or by the laws of the State as set out in T D 2951 amending Article 406 of Regulations 45 signify an officer duly authorized to administer oaths generally rather than an officer authorized to administer oaths only under special circumstances Postmasters were therefore ruled not to be authorized to verify returns See O D 701 I R B 43-20 1203 C B 3-228 This ruling has been in substance embodied in the 1924 law (see Section 1002 and regulations above quoted)

depositions should be taken and returned by the officer in accordance with the rules of the Board

Depositions on Order of Board The Board or any division thereof may at any time upon its own motion order the taking of the deposition of any witness whose testimony is deemed essential to the proper disposition of the appeal.

Section 74. Manner of Taking Depositions.[44] The person appointed to take testimony is required to be present during the taking of the deposition. Every person whose deposition is taken should be cautioned and sworn (or affirmed, if he so request) to testify the whole truth and nothing but the truth concerning the matter about which he shall testify, and shall be carefully examined His testimony should be reduced to typewriting by the officer before whom the deposition is taken, or under his direction, after which the deposition should be read and subscribed by the witness and certified in usual form by the officer After the deposition has been so subscribed and certified it should, together with two copies thereof made by such officer, or under his direction, be forwarded to the Board at its office in Washington, D. C. Upon receipt of the deposition and copies the Board files the deposition in the record in said proceeding and forwards one copy to the party at whose instance the deposition has been taken, or his counsel, and the other copy to the opposite party or his counsel.

Objections Objections to questions or answers should not be entered of record, except objections to the form of the question or to the competency of the

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44 See Rule 41 of "Rules of Practice," Appendix, p 142

witness, and no comment, explanation or argument should be recorded.

Examination of Witnesses Not Named in Order. When depositions are taken under the rules of the Board, if both parties are present or represented at the time and place specified for the taking of the depositions, either party may, after the examination of the witnesses produced under the order, be entitled to produce and examine other witnesses, but in such case one day's notice must be given to the adverse party or his counsel there present unless such notice is waived

Costs and Fees Any cost or expense incurred in the taking of depositions under the rules of the Board must be paid by the party at whose request the same are taken Persons designated to take depositions are entitled to the same fees as are paid for like services in the courts of the United States[45]

Limitation on Time for Taking No deposition shall be taken within ten days prior to the date of the hearing assigned by the Board unless under special circumstances and for good cause shown But where a deposition is permitted to be taken within ten days of the time for hearing, it should not be understood that this operates to extend the original date set for hearing. If continuance is desired, a motion therefor must be made as in other cases, giving reasonable grounds therefor.

How Written The depositions shall be typewritten upon one side of the paper only, which shall be the

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45 See Section 81, "Fees of Witnesses"

same size as required under Rule 27 of the Rules of Practice of the Board.

The secretary of the Board opens and files depositions upon their receipt as a part of the records in the case [46]

Section 75 Depositions on Written Interrogatories.[47] Depositions may be taken on written interrogatories in substantially the same manner as above indicated for depositions on oral examinations Express authority is granted by the law[48] to the Board to require the answer in writing under oath to any question of fact submitted [49] The interrogatories are required to be filed with the application in triplicate A copy thereof will be served upon, or mailed to, the opposite party by the Board Within twelve days after such service such opposite party may file with the Board his objections if any, to such interrogatories, together with any cross interrogatories he desires to propose If he files cross interrogatories they must be filed with the Board in triplicate and one copy thereof will be forwarded by the Board to the opposite party, or his counsel, who is required within ten days thereafter to file his objections, if any, to such cross interrogatories No objections to the interrogatories or cross interrogatories will be considered at the hearing unless taken before the issuance of the order for the taking of the deposition Depositions will be given the same consideration as if the deponents had testified at the hearing of the appeal

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46 See Secs 863 and 864 of the Revised Statutes with respect to depositions taken before the District or Circuit Courts in civil cases

47 Rule 42 of Rules of Practice' See Appendix, p 144

48 Revenue Act of 1924, Section 900 (1)

49 As to the right of a witness to refuse to answer, see Section 81

Section 76. Rulings of Bureau of Internal Revenue The Board has held that it will not decide questions of policy relating to the administration of the revenue laws by the Commissioner It will not, therefore, apply rulings of the Bureau of Internal Revenue to the facts before it Where, however, it is in agreement with the principles laid down in the ruling, the appeal will be decided on that basis [50] The Board has also held that it is not bound by rulings promulgated by the Bureau of Internal Revenue, but will look to the statute and regulations properly interpreting the law [51]

Section 77 Decisions of Courts While the Board considers itself bound by the decisions of the Supreme Court it is not, of course, bound by its *obiter* opinions

The pendency of a suit in the courts will not prevent a decision of the Board, but a decision may, if the Board desires, be stayed temporarily by reason thereof The Board gives such weight as it deems proper to the decisions of the Circuit and District courts [52] relating to the revenue laws in the cases before it, and except in cases where its decisions are reviewed it does not feel bound by such decisions

Section 78. Regulations of the Treasury Department. Since the function of the Board is to determine from the statute whether the tax asserted by the Commissioner is properly due, it is concerned with

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[50] Appeal of Cleveland Home Brewing Company, 1 B T A 87, Dec No 17 Docket No 73 (A)

[51] Appeal of Morrison Foundry, 1 B T A 413 Dec No 153, Docket No 348

[52] Appeal of Even Realty Company 1 B T A 355 Dec No 137, Docket No 269

the regulations only to the extent that such regulations validly interpret the revenue act in question.[53]

Section 79. Judicial Notice. The Board takes judicial notice of all laws and facts of which a court similarly circumstanced would take notice, and in addition many other matters essential to the proper understanding and decision of a case The Board will presumably take judicial notice of matters of common knowledge, including public statutes and laws, geographical facts and customs and usages generally in practice. Specific reference to the revised and general statutes of the United States, Treasury regulations and decisions, and court cases contained in the Reporter Systems, relied upon, should be made at the hearing, but their formal introduction in evidence is unnecessary But where enactments of state legislatures, of city councils, executive proclamations of governors or mayors, reports of proceedings of public bodies (including Congress) are concerned, the party relying upon them should at least present copies in the usual official print.

Section 80 Compulsory Attendance of Witnesses and Production of Documents. The Revenue Act of 1924[54] provides that for the efficient administration of the functions vested in the Board or any division thereof, any member of the Board may administer oaths, examine witnesses, and require, by subpœna ordered by the Board or any division thereof and signed by the members, the attendance and testimony of witnesses,

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53 Appeal of B B Todd, Inc., 1 B T A 762, Dec No 282, Docket No 707

54 Section 900 (1), see also Rule 40 of "Rules of Practice," Appendix, p 141

and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing. It may likewise order the taking of testimony by deposition[55] and the written answer to submitted questions of fact.[56]

Application for Subpœna Except where issued at the instance of the Board, or any division thereof, subpœna shall issue only after filing of a written application therefor. The application of a party to the proceedings for the issuance of a subpœna so made in writing shall specify the names and addresses of the witnesses required, the place where, time when, and before whom they are to appear and testify. If documentary evidence is required the application should give a sufficiently accurate description thereof to enable the witness to identify the documents, and name the books, papers, or documents for the production of which the subpœna is desired.[57] It is advisable to accompany this application by an affidavit that the documents are in the possession of the witness or under his control,[58] and to therein set forth the facts making a *prima facie* case that the documents contain evidence that is material and necessary to the petitioner's case, upon the theory that it is the duty of the Board to execute and enforce the law and to call for the production of books and papers of a witness whenever their production is necessary or proper.

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55 See Section 73, 'Oral Depositions"
56 See Section 75, 'Depositions on Written Interrogatories"
57 See Form No 3 Appendix, p 197
58 A call will undoubtedly not be issued for evidence which is presumptively in the possession of the moving party, such as copies of letters sent by the Treasury Department to the petitioner, or any documentary evidence which the moving party can himself produce

Were the litigants two private parties it is probable that as to such parties to the proceeding the facts showing a *prima facie* case would not be required to be as strong as in the case of a subpœna issued against a stranger The Supreme Court of the District of Columbia, sitting as a Court of Equity has recentl decreed that the Board may compel by subpœna the answer of the Commissioner under oath to specified interrogatories.[59]

In case a witness is required to appear and produce documentary evidence, the application and the subpœna should state whether the person so required should appear *in propria persona* or be permitted to designate some person who is familiar with the contents and meaning of such documents to appear in his place and produce the same

Section 81 Competency of Witnesses The question concerning qualification of witnesses to testify before the Board will not often arise When it does, however, the uniform rules applicable to witnesses before the Federal courts doubtless will be used in determining qualifications The competency of witnesses in civil cases in the Federal courts is now governed by the provisions of the Act of June 29, 1906,[60] which reads as follows

> "The competency of a witness to testify in a civil action suit, or proceeding in the courts of the United States shall be determined by the laws

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[59] See footnote No 51 p 62 See also Appeal of Richards & Brennan Co, 1 B T A 972 Dec No 358, Docket No 36 In general the Board may invoke the aid of the courts to require the attendance and testimony of witnesses and the production of documentary evidence It is doubtful however, whether the Board will attempt on its own initiative to compel such attendance

[60] 34 Stat L c 3608 p 618

> of the State or Territory in which the court is held"

As to hearings held by the Board in Washington, D C, the rule respecting competency of witnesses in the District of Columbia, binding on the Supreme Court of the District, will probably be applied.[61] Section 1063 of the Code of Laws for the District of Columbia provides

> "Except as herein elsewhere provided no person shall be incompetent to testify in any civil action or proceeding by reason of his being a party thereto or interested in the result thereof; but, if otherwise competent to testify, he shall be competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to such action or proceeding"[62]

Immunity of Witnesses Even though a witness obeys a subpœna, he may, however, refuse to testify on the ground that the evidence might incriminate him[63] The Fifth Amendment to the Constitution providing for immunity necessarily qualifies the right

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[61] The question is complicated by the fact that the Board may send out divisions to the several States to hear cases It would seem that where hearings are so held the rules applicable in the various States in which the hearings are held might properly be held to apply

[62] A person is not incompetent to testify because of conviction of crime, although it will affect the weight of his testimony (Section 1066) or because of relationship of husband and wife (Section 1068) Testimony when competent may be given in evidence at a hearing on same subject matter between same parties when party now insane or otherwise incapable of testifying (Section 1065) Where one of the parties jointly interested has died the other is not incompetent to testify (Section 1066) In general, objection to competency must be made before examination if known or if not known as soon as discovered see Benson v United States 146 U S 332

[63] It is for the judge before whom the question arises to decide whether an answer to a question put may reasonably have a tendency to incriminate the witness or to furnish proof of a link in the chain of evidence necessary to convict him of a crime (Wycoff v Wagner Typewriter Co, 99 Fed 158) See also Mason, et al, v U S, 244 U S 362

of the Board granted in the Act to compel testimony of witnesses The Board or any party to the proceedings, however, may invoke the aid of a court to compel attendance of a witness under subpœna [64]

Fees of Witnesses. Fees and mileage paid witnesses before the Board whether such witnesses are summoned or making depositions, are the same as are paid witnesses for like services in the courts of the United States [65]

Section 848, Revised Statutes, providing generally for fees paid for services in the courts of the United States, is as follows:

> "For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning When a witness is subpœnaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of
>
> "When a witness is detained in prison for want of security for his appearance he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day."

However, Section 1114 of the "Code of Law for the District of Columbia" provides:

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64 Where objection is made to obeying a subpœna on the grounds of incrimination of the witness, the mere statement that such would be the effect is no excuse, before he can claim this privilege he must obey the subpœna and be sworn as a witness United States v Kimbolt, 117 Fed 156, Brown v Walker, 161 U S 591

65 Revenue Act of 1924, Section 900 (1) (3) See also Rule 43 of "Rules of Practice," Appendix, p. 145

> "For each day's attendance in court or before any officer pursuant to law, one dollar and twenty-five cents, and when a witness is subpœnaed in more than one cause between the same parties at the same term only one per diem compensation shall be allowed for attendance, and for traveling, at the rate of five cents per mile, coming and returning to and from the witness' place of abode, when summoned from without the District to testify in the courts of the District.
>
> 'No officer of the United States courts shall be entitled to witness fees for attending before a court or commissioner where he is officiating.''

A departmental clerk, when subpœnaed to testify on behalf of the United States, has no right to witness fees, but his expenses are allowable. When subpœnaed by a private party he may demand and accept witness fees.[66]

The usual rules concerning the tender of witness fees and mileage apply to witnesses before the Board.

Service and Proof.[67] Service may be made by any citizen of the United States over the age of twenty-one years, not a party to or in any way interested in the appeal, and competent to be a witness. Proof of service may be made by affidavit.

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[66] (1895) 21 Op Atty-Gen 263
[67] Rule 40 of "Rules of Practice," Appendix, p 141

CHAPTER VI

PRESENTATION OF CASES BEFORE THE BOARD OF TAX APPEALS

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Section 82 Introductory. It has been found that many tax practitioners, even though familiar with trial procedure in the courts, have assumed that the procedure before the Board of Tax Appeals would be largely similar to a conference in the Bureau of Internal Revenue and have prepared their cases accordingly. Such misapprehension has frequently resulted in unfavorable decisions, although the merits of the cases, had they been supported by competent evidence and submitted in accordance with the rules of the Board, would have justified decisions favorable to the taxpayers. The informality in proceedings before the Income Tax Unit, in the submission of data and arguments, has created in the minds of many counsel an expectation that similar informality would prevail before the Board of Tax Appeals, and, it is believed, this has seriously handicapped the Board in hearings before it The Board, through its members, has suggested from time to time that although it will attempt in all cases to arrive at a fair and correct decision, it will be materially assisted in that purpose by an orderly presentation of the case along lines familiar to the courts

It is perhaps natural that practitioners appearing before the Board for the first time should find it difficult to disassociate their experience before the Bureau of Internal Revenue. Under the procedure

there, letters, ex parte affidavits, unsworn statements, briefs of arguments, contentions, rulings, opinions, and the like, have frequently been admitted into the record indiscriminately In a conference in the Income Tax Unit of the Bureau of Internal Revenue, counsel for a taxpayer deal with men who already know many of the facts of the case and who are aware in advance of the basis of the ruling under discussion. The Board of Tax Appeals, however, being a body of original jurisdiction, knows nothing about a case until it is presented before it The members of the division, never knowing which cases will be assigned to them, do not attempt even to examine the pleadings in advance of the hearings Consequently, if the opening statements of the counsel are inadequate or the evidence is developed in illogical order, considerable effort on the part of the Board must be devoted to finding out what the case is all about It is, of course, evident that until that is accomplished, little effective thought can be given to the actual solution of the issues involved

Bearing in mind that the members of the Board open the hearing with no knowledge of the nature of the case, the contentions of the parties, or the evidence to be adduced, counsel should marshal their facts both in opening statements and in production of evidence in such manner as to present a picture that the Board may readily grasp The Board will then be in a position fully to comprehend the argument when it is made, and its effectiveness will be increased. Since the statute provides that the Board shall publish its findings of fact, and that they shall be prima facie

evidence in subsequent proceedings in the courts, it is obvious that the record upon which such findings of fact are predicated should be carefully and legally constructed Definiteness of issue, clarity of presentation, and accurate statements of facts are necessary elements in the proper decision of cases

Section 83 Order of Proceedings at Hearing. In the logical presentation of an appeal at a hearing there are three main stages: first, the opening statement, second, the proof, i e, the establishment of facts relied upon in support of the appeal, and third, the argument The order of proceedings is discussed in sequence in the following paragraphs.

As in the courts, a moving party has the burden of going forward and is entitled to the last word. If an appeal is being heard upon the merits, the taxpayer is the moving party for he is seeking a reversal or modification of the determination made by the Commissioner. Where the Commissioner moves to dismiss a petition, e g, on the ground of lack of jurisdiction, or because he claims that upon its face it is insufficient to constitute a basis for the relief sought, he is the moving party. Where the defendant, by the nature and character of his pleading, absolutely admits the facts alleged by the petitioner thereby absolving him from the necessity of making any proof thereof in order to succeed, the burden of the argument rests with the defendant, and he is, therefore, entitled to open and close. Where there are several issues, if the petitioner is called on to establish the facts with respect to a single one, he retains the right to open and close

Section 84. Calling of the Case. The first step in a hearing is the calling of the case by the presiding member of the division sitting He announces the name of the taxpayer and the docket number of the appeal Appearances for the respective parties are then noted, counsel stating their names for the purposes of the record. Even when personally acquainted with the members of the Board, counsel should do this for the convenience of the clerk and reporter.

Section 85. Motions. After the calling of the case the next step is the making of any motion which should be considered as a preliminary to the hearing The moving party is first heard, then the opposite party. If further discussion is deemed necessary by the Board, the presiding member so indicates

Section 86. Opening for Taxpayer. Following the calling of the case and the hearing of motions, if any, the opening statement is made by taxpayer's counsel [1] The object of an opening is to state briefly the nature of the appeal, the substance of the pleadings, the points in issue, the facts, and the substance of the evidence counsel expects to introduce. In his opening statement counsel should set forth in proper order the following matters

(a) *The Nature of the Appeal,* i e, whether the appeal is from a determination of income, profits, estate, or gift taxes, in case of income or profits taxes the taxable year or years involved; in case of estate or gift taxes the date of death or of making the gift;

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1 The rule is otherwise in case of a hearing upon a motion by the Commissioner such hearings will be treated subsequently See Sec 93, p 127

in all cases the amount of the deficiency, and a reference to the Revenue Act under which the determination was made For example:

> "This is an appeal from a determination of a deficiency in income and profits taxes for the calendar years 1919 and 1920 in the sum of $5,000, under the Revenue Act of 1918"

If the entire amount of the deficiency is not in controversy, the amount in dispute should be stated

(b) *The Nature of the Adjustment Underlying the Determination,* e g

> "Arising from the disallowance by the Commissioner of a deduction claimed by the taxpayer for depreciation of machinery."

(c) *The History of the Transaction Involved* This involves the necessary preliminaries to a full comprehension on the part of the Board of the situation, as well as an exposition of the transaction itself. Chronological order is best adapted to this purpose The nature of the taxpayer (individual or corporate, with place of residence or state of domicile, place of business), nature of business, history (where pertinent) prior to commencement of transaction involved, nature of the transaction, and details of the transaction in chronological order, should be stated [2]

(d) *Treatment of the Transaction by the Taxpayer in His Returns.* There should be a brief statement, at this point, of what the taxpayer's returns showed with respect to the transaction Statement of the reasons therefor should be deferred until further on in the opening statement [2]

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[2] History of the transactions should not be confused with history of the case in the Bureau of Internal Revenue The Board is not usually interested in the history of the case from the first examination of the Revenue Agent down through its ramifications and vicissitudes in the Bureau See Paragraph (e)

(e) *Treatment of the Transaction by the Commissioner* The prior *proceedings* in the Bureau of Internal Revenue are usually unimportant, but the Commissioner's final action and the basis for it should be stated, both facts and law being covered If the Commissioner decided the facts to be otherwise than as claimed by the taxpayer, his findings, with the basis for them if known, and his conclusions from the facts so found, should be stated It is not necessary to go into much detail as to the Commissioner's *reasoning* (that is a matter for his counsel to handle) but his ultimate conclusion should be mentioned

(f) *The Taxpayer's Theory.* Briefly (saving detailed argument until after the evidence is in) the taxpayer's conclusions of fact and law should be set forth

(g) *Summary of Evidence to be Adduced on Behalf of the Taxpayer* It is not necessary to repeat the nature and history of the transaction previously given, but the Board should be advised briefly as to what is admitted by the pleadings and by stipulations filed, and what the various witnesses and exhibits are expected to show, to the end that the members may be aware of the purposes for which the various items of evidence are to be introduced and may weigh them accordingly. Within reasonable limits the extent of the opening statement is left to the discretion of counsel.

Section 87. Opening for Commissioner. Following the opening for the taxpayer, and before any evidence is introduced, the representative of the Com-

missioner makes an opening statement, setting forth his views of the facts and the law

Section 88. **Taxpayer's Evidence.** As far as practicable, the evidence should be adduced in logical sequence so as to minimize the burden on the Board of piecing together a story made up of disconnected parts The marshalling of evidence in such manner as to have it tell a connected and easily followed story is one of the most important factors in the proper presentation of a case Since the burden of proof is upon the taxpayer, and doubts as to matters of fact are resolved in favor of the Commissioner, it is obvious that any confusion in the minds of the members of the Board should be avoided if the taxpayer hopes to have the facts found in accordance with his contentions

The order of proof and the various kinds of evidence, including stipulations, depositions, testimony and exhibits, have been previously discussed at some length.[3]

Section 89 **Examination of Witnesses.** The following paragraphs of this section outline very briefly the rights of counsel in eliciting testimony by direct examination, cross-examination and redirect examination of witnesses Only the rules of major importance and such as are considered to be more likely to arise in hearings before the Board of Tax Appeals are discussed.

Ordinarily, a witness may only be examined by one counsel on a side, and only one counsel for the adverse party will be permitted to make objections during the

3 See Chapter V

examination of a given witness The Board, in its discretion, may modify this rule when necessary to accomplish the ends of justice or to expedite the proceedings

After a witness has been duly sworn and his competency established, he is first examined on behalf of the party calling him Such interrogation is designated as the direct examination of the witness He is afterwards examined as to the same matters by the adverse party Such interrogation is designated as cross-examination

Direct Examination In direct examination of a witness, questions may not be put which suggest to the witness the answer desired Such questions are designated as leading questions For the purpose of approaching the points at issue, leading questions may be put to the witness and counsel may recapitulate to him the acknowledged facts of the case which have been already established The rule therefore is not applied to that part of the examination which is merely introductory to that which is material. There are a number of general rules as to questions held to be objectionable on the ground that they are leading.[4]

(a) Questions are objectionable as leading which embody a material fact and admit of an answer by a simple negative or affirmative But that the question may be answered by "yes" or "no" is, of course, not necessarily decisive of its leading character.

(b) An argumentative course of interrogation is not permitted The interrogatory must not assume

4 Greenleaf on 'Evidence," 16th Edition, pp. 537-539.

facts to have been proven which have not been proven, nor that particular answers have been given which have not been given

(c) With certain exceptions the witness is to be examined only as to matters of fact within his own knowledge, whether they consist of words or actions. As to these matters he should, in general, be plainly, directly and distinctly interrogated. Except where expert testimony is being given, the witness may not be interrogated as to inferences or conclusions.

Where the witness is hostile to the party producing him, or is unwilling to give evidence, leading questions are permitted Leading questions are generally permissible in cross-examinations Where the witness is evidently unable to answer a question because of faulty recollection, a proper suggestion assisting him may be made.

Use of Written Instrument to Refresh Recollection. A witness is permitted to refresh his memory by referring to a written instrument, memorandum or entry in a book made by him at or near the time to which it relates, and he may be compelled to do so if the writing is present in court For the purposes of a hearing before the Board, it may be stated in general that where the witness neither recollects the facts, nor remembers to have recognized the written statement as true, his testimony so far as it is founded upon the written paper, is hearsay and will be either excluded or admitted subject to valuation as to the proper weight to be given it

Cross-Examination After the witness has been examined on direct examination, adverse counsel has

a right to cross-examine him It is now well established that a party has no right to cross-examine any witness except as to facts and circumstances connected with the matters stated in his direct examination If he wishes to examine him as to other matters, he must do so by making the witness his own and calling him as such in the subsequent progress of the cause On cross-examination, considerable latitude is customarily allowed with reference to questions as to collateral facts, especially where, on account of the conduct of the witness or the circumstances, such procedure seems essential to the discovery of the truth, or where the cross-examiner will undertake to show the relevancy of the question or questions by subsequent evidence It is, however, well established that a witness cannot be cross-examined as to any fact which is collateral and irrelevant to the issue, merely for the purpose of contradicting him by other evidence if he should deny it, thereby to discredit his testimony

Considerable latitude will be allowed in cross-examining witnesses as to values in order to test the accuracy of their knowledge and the reasonableness of their estimates To test such opinion evidence, a witness may be interrogated as to the grounds on which his opinion is based Hypothetical questions are frequently allowed to test the skill or knowledge of the witness, although such questions assume facts for which there is no foundation in the evidence.

Redirect Examination After the witness has been cross-examined along the lines indicated in the preceding paragraph, the party who called him has the

right to examine the witness as to matters brought out on cross-examination On such redirect examination, counsel has no right to introduce new matter, or matter which is not suited to the purpose of explaining either the expressions or the motives of the witness, or to rebut or neutralize any adverse inferences which can be drawn from the evidence elicited on his cross-examination The Board may, however, in its discretion permit a witness to be reëxamined with reference to subjects not brought out on either his cross-examination or his examination-in-chief.

Section 90. Resting Case. At the conclusion of the introduction of the taxpayer's evidence-in-chief, his counsel indicates to the Board that the taxpayer rests. The Commissioner's evidence is then introduced, and he rests If new matters have been brought out in the Commissioner's evidence, the taxpayer may introduce evidence in rebuttal. This process continues until both parties have finally rested After the case has been finally rested on both sides, it will be reopened and further evidence admitted only under extraordinary circumstances, the right to reopen being a matter entirely in the discretion of the Board

Section 91. Taxpayer's Opening Argument. As a general rule the Board will not permit more than two counsel on each side to be heard This rule, however, is subject to some variation under extraordinary circumstances Where several taxpayers appear by separate attorneys and have separate counsel, they will each be heard unless their interests are in unison, in which case, the Board may require them to select one or more of the counsel to be heard for all The

length of time consumed in the argument may be limited by the Board in exercise of its discretion

Counsel may discuss any facts in evidence and their application to the law. Counsel also have a right to comment on any conflict of evidence. The argument should, however, be confined to vital issues Although in hearings before the Board, the occasion will not frequently arise when counsel will desire to comment on the bias or interest of a witness, they may do so if they desire Comment may also be made on the fact that the adverse party has failed to put in evidence documents shown to be within his control and to contain relevant evidence The weight and sufficiency of the evidence may likewise be discussed and comment directed to the consideration which it should receive. It is proper for counsel to comment on facts of which the Board may take judicial notice, although evidence of such facts has not been introduced With this exception, counsel should not state as facts matters which are not in evidence

The Board may and in some cases does regulate the argument of the counsel, and frequently directs the trend of the argument by questions directed to counsel. Counsel are also, of course, expected to discuss the questions of law involved. It is advisable, however, that counsel should first have discussed the evidence with such comments thereon as they desire to make.

Section 92. Commissioner's Argument. The Commissioner's counsel has the same right to discuss the questions of law and fact involved as has the taxpayer The principles stated in the preceding section

are therefore applicable to the argument for the Commissioner.

Section 93. Taxpayer's Closing Argument At the conclusion of the Commissioner's argument the taxpayer's counsel is given an opportunity to be heard in rebuttal Abuse of this privilege will not, however, be permitted, and counsel for the taxpayer is expected to restrict himself to such issues as have developed as a result of the Commissioner's argument While a summary statement of the taxpayer's position will be permitted, it is not expected that the counsel will, in such closing, repeat at any great length the matters covered in his opening argument

Section 94. Proceedings Subsequent to Argument and Preliminary to Decision. The right of the parties to file briefs at the termination of the hearing or subsequent thereto has been previously discussed [5] Consideration has also been given to the requirement that both parties submit proposed findings of fact.[6] A reference has also been made previously to the procedure to be followed where the Board, upon the making of a decision, has directed a recomputation of the deficiency in a manner indicated [7]

Section 95 Procedure in Hearings on Motions. Motions before the Board of Tax Appeals fall into two general classes—those made in writing and filed with the Board, and those made orally at a hearing

Motions in Writing [8] Motions involving pro-

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[5] See Sec 50, Chapter IV
[6] See Sec 51, Chapter IV
[7] See Sec 52, Chapter IV
[8] For the form which motions should take, see Sec. 49

cedure, e. g, motions for continuances, for leave to amend pleadings, etc, are usually passed upon by the Board ex parte, that is, they are decided without notice to the adverse party. Motions to compel the adverse party to amend his pleadings are sometimes decided ex parte and sometimes set for hearing Motions by the Commissioner to dismiss appeals are always decided after opportunity for hearing has been accorded.

Where opportunity for hearing upon a motion is given, the appeal is listed on the day calendar for the day set. At the call of the calendar it is sent to the division which on that day is hearing motions, unless it appears to be unopposed, in which case the Chairman calling the calendar may either dispose of it himself or send it to the motion division In the motion division the procedure on a motion is similar to that in a hearing upon the merits described in the preceding sections of this chapter, except that the burden is upon the moving party, who has the right to open and close Usually on motions, no evidence is necessary, but there are some motions in which evidence is required For example, when the Commissioner moves to dismiss a petition upon the ground that it was not filed within sixty days of the mailing of the deficiency letter, he is always required to produce evidence of the date of mailing (usually in the form of a certified copy of a post-office registry receipt), and in cases where the Commissioner moves to dismiss the petition on the ground of lack of jurisdiction of the Board, the Board usually calls for copies of all the communications from the Commis-

sioner to the taxpayer. Even where such evidence is required, however, its introduction is not treated as forming a definite division of the hearing. The opening statements and closing arguments are combined and the evidence is introduced during such presentation, that is, the moving party makes a combined statement and argument and presents any evidence that is necessary; the adverse party follows suit; and then the moving party, if there be any need, is permitted to make a statement in rebuttal

Oral Motions at Hearing. Where an appeal is upon a day calendar for hearing upon the merits and no appearance is made on behalf of the taxpayer at the call of the calendar, it is customary for the Commissioner to make a motion to dismiss. This motion is made orally, but is referred to the division hearing motions and is disposed of by it

At a hearing upon the merits, it frequently occurs that motions are made orally by counsel for one party or the other, e. g, motions to exclude witnesses from the room during the examination of other witnesses, to amend a pleading to conform with the proof, to strike out a part of one's own pleading, and, of course, all the minor motions connected with the examination of witnesses and introduction of documentary evidence. The procedure on such motions is entirely in the discretion of the Board Sometimes, upon the making of such a motion, the Board will grant or deny it peremptorily without hearing either counsel, sometimes it will hear one counsel and not the other, sometimes it will permit a protracted discussion by counsel for both parties Occasionally the

Board, after hearing counsel, will take a motion under advisement instead of ruling upon it forthwith, and reserve decision upon it until some time after the hearing, or until decision is made upon the merits of the appeal

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PART I

RULES OF PRACTICE[1]

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[1] As a foreword to the original rules issued in July, 1924 the following statement was made "The following Rules of the United States Board of Tax Appeals were prepared with as much care and consideration as time and public interest permitted Experience will test their sufficiency The Board reserves the right to make changes from time to time and without notice in order that the Rules may at all times be made to meet the requirements of the Revenue Act of 1924 Suggestions and proposed revisions from those practicing before the Board will be welcomed It is the desire of the Board to establish a simple and direct system of practice and procedure in order that prompt relief may be administered"

[2] It will be noted that the rule numbers do not run consecutively from 1 to 50 Such missing numbers are being reserved possibly, to designate additional rules, as occasion may require

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Rule 1 Business Hours

The office of the board at Washington, D. C, will be open each business day from 9 o'clock a m, to 4 30 o'clock p m

Rule 2. Admission to Practice

A register of persons entitled to practice before the board will be maintained by the Board in which will be entered the names of all such persons Firms will not be admitted or recognized

The following classes of persons whom the board finds, upon consideration of their applications, to be of good, moral character and to possess the requisite qualifications to represent others may be admitted to practice before the board

(a) Attorneys at law who are admitted to practice before the Supreme Court of the United States or the highest court of any State or Territory or the District of Columbia

(b) Certified public accountants duly qualified under the law of any State or Territory or the District of Columbia

An application under oath for admission to practice shall be addressed to the United States Board of Tax Appeals, Washington, D C, and must state the name, residence address, and business address of the applicant, and the time and place of his admission to the bar, or qualification as a certified public accountant Such application shall also state whether the applicant has ever been suspended or disbarred as an attorney in any court, or his right to practice as a certified public accountant suspended or revoked in any jurisdiction Such application shall be accompanied by a certificate of the clerk

of the court in which the applicant is admitted to practice to the effect that he has been so admitted and is in good standing, or a certificate by the proper State, Territorial, or District authority to the effect that the applicant is a certified public accountant in good standing, duly qualified and entitled to practice in such State or Territory or the District of Columbia

The board may, in its discretion, deny admission, suspend or disbar any person who it finds does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or proper professional conduct An attorney or certified public accountant who has been admitted to practice may be disbarred only after he is afforded an opportunity to be heard

The Board shall have the right at any time to require a statement, under oath, of the terms and circumstances of any contract of employment of an attorney or certified public accountant with the taxpayer he represents

Any individual taxpayer or member of a taxpayer partnership may appear for himself or such partnership upon adequate identification to the Board A taxpayer corporation may be represented by a bona fide officer of the corporation upon permission granted in its discretion, by the Board or the division sitting

Rule 5 Initiation of Appeal—Petition

An appeal shall be initiated by the filing with the Board of a petition The petition shall contain

(a) A caption in substantially the following form

UNITED STATES BOARD OF TAX APPEALS

Appeal of . . .

Address . . . Docket No . .

Petition

(b) Proper allegations showing jurisdiction in the Board

(c) A statement of the amount of the deficiency, the nature of the tax, the year for which asserted, and the amount thereof (as nearly as may be determined) in controversy

(d) Clear and concise assignments of error alleged by the taxpayer to have been committed by the Commissioner of Internal Revenue in determining the tax liability of the petitioner, such assignments of error shall be numbered.

(e) A clear and concise statement of the facts upon which the taxpayer relies as constituting the basis of his appeal

(f) A statement of the propositions of law involved

(g) A verification by the taxpayer

The petition shall be complete in itself, so as fully to inform the board of the issues to be presented

To the petition shall be appended a copy of the Commissioner's letter advising the taxpayer of the determination of the deficiency (the so called "sixty-day letter")

Rule 6 Filing of Petition

Five clear copies of the petition, either printed or typewritten as provided in Rule 27, shall be filed The original shall be signed by the taxpayer, or his counsel, and duly verified by the taxpayer Signature of counsel shall be in individual and not in firm name. The filed copies of the petition shall conform to the original.

The appeal is filed when the petition is received by the Board

Rule 7. Service on the Commissioner of Internal Revenue

The Board upon the receipt of the petition will serve one copy thereof upon the Commissioner of Internal Revenue forthwith.

Rule 8 Docket

Upon receipt of the petition by the Board the appeal will be entered on the docket and assigned a number and the taxpayer or his representative notified thereof This number shall appear upon all papers thereafter filed in the case

Rule 9 Answer

After service upon him of the petition, the Commissioner shall have twenty days within which to file an answer or to move in respect of the petition. The answer shall be so drawn as fully and completely to advise the taxpayer and the Board

of the nature of the defense It shall admit or deny each material allegation of fact contained in the petition and set forth any new matters of fact and propositions of law upon which the Commissioner relies Five copies of the answer shall be filed, of which the original shall be signed by the Commissioner or his counsel and the copies conformed

Rule 10 Service of Answer

Upon the filing of the answer the Board will serve one copy thereof on the taxpayer or his counsel by registered mail, and the return post office receipt for said answer shall be proof of the service of the same

Rule 11 Joinder of Issue

The appeal shall be regarded as at issue upon the filing of the answer

Rule 12 Extensions of Time

Continuances, extensions of time, and adjournments may be ordered by the Board on its own motion and may be granted by it in its discretion on motion of either party filed in writing and stating the reasons therefor

Rule 13. Amended and Supplemental Pleadings

Amended and supplemental pleadings may be filed only upon leave granted

Rule 15 Calendar

(a) Formation of Calendar—All appeals will be placed upon the calendar in the order in which they are at issue, and such appeals shall stand for hearing and submission in that order upon notice as hereinafter provided in this rule Provided, The Board, on its own motion or on motion of either party, after due notice thereof, may advance the hearing of appeals whenever considerations of public policy make such action appear desirable

(b) Notice of Hearing—When issue is joined the Board will give written notice of such fact by mail to all parties Notice as to probable date of hearing will be given to all parties by the Board, either in conjunction with notice of

joinder of issue or otherwise, at least fifteen days in advance of the date specified

(c) Dismissal for Nonprosecution.—The Board may at any time after the joinder of issue, upon motion of either party or upon its own motion, order any appeal to be brought on for hearing, and may dismiss the same for nonprosecution if, when the appeal is called, the taxpayer does not show cause against such dismissal. The provisions for dismissal in cases of appeals coming on for hearing in regular course are contained in Rule 18.

Rule 16. Assignments of Hearings

The assignments of appeals for hearing shall be made by the chairman on each day of session for hearing on that day. Such assignments may be made without regard to the numerical arrangement of the appeals on the calendar.

Rule 17. Hearings

(a) Sessions.—The Board will convene at 10 o'clock a. m. on each hearing day.

(b) Times and Places of Hearings.—Hearings will be held at such times and places as may from time to time be fixed by the chairman.

Rule 18. Submission Without Argument

An appeal in which issue has been joined and in which no issue of fact is raised, or a contested motion not predicated upon an issue of fact, in which both parties are not present in person or by counsel at the time it is called for hearing, will be regarded as submitted on the part of the absent party or parties. Where there is a joinder of issue on questions of fact the provisions of this rule relative to a submission without argument shall not relieve the party upon whom rests the burden of proof, of adducing at the hearing proper evidence in support of his contention. Pleadings do not constitute evidence and where issues of fact are joined, failure to adduce supporting evidence will be taken as ground for dismissal.

Rule 20. Burden of Proof

Upon hearing of appeals the taxpayer shall open and close and the burden of proof shall be upon him.

Rule 21. Motions

Motions must be in writing and five copies filed with the Board The Board will serve one copy thereof upon the adverse party Motions consented to or which indicate by indorsement thereon that they are not objected to by the opposite party may be acted upon by the chairman. Contested motions may be acted upon by the chairman or they may be referred by him to the Board or to a division or a member of the Board

Rule 25 Briefs

Briefs shall conform in size and style to the provisions of Rule 27 If typewritten, five copies shall be filed, if printed, twenty copies

A brief filed by a taxpayer shall contain, in the order here stated

(a) A statement of the nature of the tax and how the appeal comes before the Board

(b) A concise statement of the facts

(c) A concise statement of the points upon which the tax payer relies

(d) The argument

A brief for the Commissioner of Internal Revenue shall be in similar form except that no statement of the nature of the tax or how the appeal comes before the Board shall be required, and no statement of facts unless that presented by the taxpayer is controverted

Every brief of more than twenty pages shall contain on its front fly leaves a table of contents with page references, supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited

One copy of each brief filed will be delivered by the Board to the opposite party.

Rule 26 Findings of Fact

At the conclusion of the hearing of an appeal before the board, or a division thereof, both parties shall present to the board, or the division before which such appeal was heard, proposed findings of fact.

Such proposed findings of fact shall contain a statement of the findings desired in the form of distinct numbered propositions of the facts which it is desired be found, and each proposition must be so prepared with respect to its length, subject matter, and phraseology that the Board, or a division thereof, may conveniently pass upon it; and they must be so arranged as to present a concise statement in orderly and logical sequence of the whole case as it is desired to have it appear in the findings of fact

Five copies of such proposed findings shall be filed with the Board

Upon the filing of the proposed findings of fact notice of such filing, together with a copy of the proposed findings of each party, will be served upon the opposite party by the Board Within five days after the receipt of such notice of filing of proposed findings each party may file objections to the proposed findings wherein he shall point out specifically such objections to such proposed findings, or any part thereof, as he may desire, at the time of filing such objections either party may request such additional findings as he may desire to have appear in the findings of fact

Rule 27 Form and Style of Papers

All papers filed with the Board may be either printed or typewritten, and if typewritten shall be on one side of the paper only, on paper not more than eight and one half inches wide and eleven inches long, and weighing not less than sixteen pounds to the ream, folio base seventeen by twenty two inches, and fastened on the left side Copies shall be legible, but may be on any weight paper If printed they shall be in ten or twelve point type, on good unglazed paper five and seven-eighth inches wide by nine inches long, with inside margin not less than one inch wide, and with double leaded text and single leaded quotations Citations shall be in italics

Rule 30 Stipulations

The taxpayer and the Commissioner of Internal Revenue may, by stipulation in writing filed with the Board, or presented at the hearing, agree upon any facts involved in the

case It is desired that facts be thus stipulated in so far as and whenever practicable

Rule 31 Ex Parte Affidavits

Ex parte affidavits will not be received as evidence on disputed questions of fact unless the affidavit is first submitted to the opposing counsel prior to the hearing and his consent to the introduction thereof obtained

Rule 32 Oral Testimony

(a) Transcript of Testimony.—If the amount of tax in controversy is more than $10,000, the oral testimony introduced at the hearing shall be taken stenographically and a transcript thereof shall be made, if the amount is $10,000 or less, the oral testimony shall not be taken stenographically unless in the opinion of the division holding the hearing a permanent record of the testimony is deemed necessary

(b) Admissibility of Evidence.—The division holding a hearing shall be the sole judge of the relevancy and admissibility of evidence It shall be its concern to elicit the material facts

Rule 33 Documentary Evidence

(a) Copy of Parts of Document.—Where relevant and material matter offered in evidence is embraced in a book, paper, or document containing other matter not material or relevant and not intended to be put in evidence, such document shall not be filed, but a copy only of such relevant and material matter shall be filed

(b) Receipt of Documentary Evidence.—Where agreed upon by the taxpayer and the Commissioner of Internal Revenue at or after the hearing, the division, if it deems advisable, may receive specified documentary evidence as a part of the record within a time to be fixed by it

Rule 40 Subpoenas

(a) How Issued.—Except where issued at the instance of the Board or any division thereof, subpœnas shall issue only after filing of a written application therefor.

(b) Application For.—The application shall specify the

names and addresses of the witnesses required, the place where, time when, and before whom they are to appear and testify, and if documentary evidence is required, a sufficiently accurate description thereof to enable the witness to identify the documents. (Note—See form in Appendix)

(c) For Production of Documents—In case a witness is required to appear and produce documentary evidence, the application and the subpœna should state whether the person so required should appear in propria persona or be permitted to designate some person who is familiar with the contents and meaning of such documents to appear in his place and produce the same

(d) Payment of Fees and Mileage—At the time of service of subpœna on behalf of the taxpayer on any witness required, the fees and mileage provided by Section 900 (1) of the Revenue Act of 1924 shall be tendered and paid to such witness

(e) Service and Proof.—Service may be made by any citizen of the United States over the age of twenty-one years, not a party to or in any way interested in the appeal, and competent to be a witness Proof of service may be made by affidavit

Rule 41. Depositions on Oral Examination

Where the taxpayer and the Commissioner of Internal Revenue are unable to agree upon the facts in any case, depositions may be taken in accordance with the following rules·

(a) Application to Take—When either party proposes to take a deposition, a verified application, with two conformed copies, shall be made to the Board setting forth the following

(1) The name and post office address of the witness whose deposition is proposed to be taken.

(2) The subject matter or matters concerning which the witness is expected to testify, together with a statement of the reasons why it is desired to take the deposition and why the witness or witnesses should not be required to appear personally and testify at the hearing

(3) The time and place of taking the deposition and the name, post office address, and official designation of an individual competent to administer oaths under the Revenue Act of 1924, before whom it is proposed to take the deposition.

(b) Order For.—Upon receipt of such application by the Board, it will make an order, copy of which will be mailed or delivered to the taxpayer and to the Commissioner of Internal Revenue, or their counsel, wherein the Board will name the witness whose deposition is to be taken and specify the time when, place where, and the officer before whom the witness is to testify, but such time and place and the officer before whom the deposition is to be taken so specified in the Board's order may or may not be the same as those named in the application to the Board.

(c) By Stipulation.—At any time after issue is joined the parties or their counsel may, by stipulation duly signed and filed with the Board, take the depositions of any witnesses whose testimony they deem material to the issues. In such cases the stipulation shall state the names and addresses of the witnesses; the time when and the place where such depositions will be taken, and the name, address, and official title of the officer before whom it is proposed to take the depositions. In such cases no order to take depositions will be issued by the Board, but such depositions shall be taken and returned by the officer in accordance with the rules of the Board.

(d) Manner of Taking Depositions.—The person appointed to take testimony shall be present during the taking of the deposition. Every person whose deposition is taken shall be cautioned and sworn (or affirmed, if he so request) to testify the whole truth and nothing but the truth concerning the matter about which he shall testify, and shall be carefully examined. His testimony shall be reduced to typewriting by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be read and subscribed by the witness and certified in usual form by the officer. After the deposition has been so subscribed and certified it shall, together with two copies thereof made by such officer, or under his direction, be forwarded by such officer under seal in an envelope addressed to the Board at its office in Washington, D. C. Upon receipt of the deposition and copies the Board will file the deposition in the record in said proceeding and forward one copy to the party at whose in-

stance the deposition has been taken, or his counsel, and the other copy to the opposite party or his counsel

(e) Objections.—Objections to questions or answers shall not be entered of record, except objections to the form of the question or to the competency of the witness, and no comment, explanation, or argument shall be recorded.

(f) Witnesses Not Named in Order.—When depositions are taken under these rules, if both parties are present or represented at the time and place specified for the taking of the depositions, either party may, after the examination of the witnesses produced under the order, be entitled to produce and examine other witnesses, but in such case one day's notice must be given to the adverse party or his counsel there present unless such notice is waived

(g) Costs and Fees.—Any cost or expense incurred in the taking of depositions under these rules shall be paid by the party at whose request the same are taken. Persons designated to take depositions shall be entitled to the same fees as are paid for like services in the courts of the United States

(h) Depositions on Order of Board.—The Board or any division thereof may at any time upon its own motion order the taking of the deposition of any witness whose testimony is deemed essential to the proper disposition of the appeal

(i) Limitation on Time For Taking.—No deposition shall be taken within ten days prior to the date of the hearing assigned by the Board unless under special circumstances and for good cause shown

(j) How Written.—The depositions shall be typewritten upon one side of the paper only, which shall be the same size as required under Rule 27

Rule 42. Depositions on Written Interrogatories

Depositions may be taken on written interrogatories in substantially the same manner as above indicated for depositions on oral examinations. The interrogatories must be filed with the applications in triplicate and a copy thereof will be served upon, or mailed to, the opposite party by the Board. Within twelve days after such service such opposite party may file with the Board his objections, if any, to such interrogatories,

together with any cross interrogatories he desires to propose If he files cross interrogatories they shall be filed with the Board in triplicate and one copy thereof will be forwarded to the opposite party, or his counsel, who shall within ten days thereafter file his objections, if any, to such cross interrogatories. No objections to the interrogatories or cross interrogatories will be considered at the hearing unless taken before the order for the taking of the deposition issues.

Rule 43 Fees and Mileage

Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States Witness fees and mileage, and fees of persons designated to take depositions, shall be paid by the party at whose instance the witnesses appear, or their depositions are taken.

Rule 44 Computation of Time—Sundays and Holidays

When the time prescribed by these rules for doing any act expires on a Sunday or a legal holiday in the District of Columbia, such time shall extend to and include the next succeeding day that is not a Sunday or such legal holiday.

Rule 50 Settlement of Final Determinations

When the Board makes a decision directing the recomputation of a deficiency in an indicated manner, the procedure shall be as follows (1) The parties may stipulate that the deficiency shall be determined at a stated amount, and file the stipulation as the basis of a final determination on consent (2) Either party may prepare a proposed determination, showing the basis and method of its computation and file five copies thereof with the Board, accompanied by a notice that it will be presented to the Board for settlement on a stated day (other than a Friday or Saturday) not sooner after filing than the number of days allowed in the Board's decision The Board will serve one copy upon the adverse

party and the latter shall show cause before the Board, by filing before the day stated in the notice, five copies of an alternative proposed determination Failure so to propose an alternative determination will be treated as a consent to the proposed determination of the adverse party theretofore filed, and an order settling determination of tax accordingly will be entered by the chief of the division from which the decision emanated. Determinations noticed for settlement and contested will be called in the regular daily calendar call of the Board, and will be assigned by the chairman to the division from which the decision emanated for disposition on the papers filed or after a hearing, as the situation may require

PART II

PROVISIONS OF REVENUE ACT OF 1924 AFFECTING APPEALS

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LAW

Section 900. (a) There is hereby established a Board to be known as the Board of Tax Appeals (hereinafter referred to as the "Board") The Board shall be composed of seven members, except that for a period of two years after the enactment of this Act the Board shall be composed of such number of members, not more than twenty-eight, as the President determines to be necessary.

(b) Each member of the Board shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office The term of office of all members who are to compose the Board during the period of two years after the enactment of this Act, shall expire at the end of such period The terms of office of the first seven members who are thereafter to compose the Board shall expire, two at the end of the fourth year, two at the end of the sixth year, two at the end of the eighth year, and one at the end of the tenth year, after the expiration of such two-year period The term of office of each such member shall be designated by the President, and

the terms of office of their successors shall expire ten years after the expiration of their predecessors' terms, except that any individual appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor, and a member in office at the expiration of the term for which he was appointed may continue in office until his successor is qualified Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office, but for no other reason. Each member shall receive a salary at the rate of $7,500 per annum

(c) No member of the Board appointed for a term beginning after the expiration of two years after the enactment of this Act shall be permitted to practice before the Board or any official of the Bureau of Internal Revenue for a period of two years after leaving office.

(d) The Board shall at least biennially designate a member to act as chairman. The Board shall have a seal which shall be judicially noticed

(e) The Board and its divisions shall hear and determine appeals filed under Sections 274, 279, 308, and 312. A majority of the members of the Board or of any division thereof shall constitute a quorum for the transaction of the business of the Board or of the division, respectively A vacancy in the Board or in any division thereof shall not impair the powers nor affect the duties of the Board or division, nor of the remaining members of the Board or division, respectively

(f) The chairman may from time to time divide the Board into divisions and assign the members thereto, and designate a chief thereof If a division, as a result of a vacancy or the absence or inability of a member assigned thereto to serve thereon, is composed of less than three members, the chairman may assign other members thereto, or he may direct the division to proceed with the transaction of business A division shall hear and determine appeals filed with the Board and assigned to such division by the chairman. Upon the expiration of thirty days after a decision by a division, such decision, and the findings of fact made in connection therewith, shall

become the final decision and findings of the Board, unless within such period the chairman has directed that such decision shall be reviewed by the Board

(g) In any proceeding in court under Sections 274, 279, 308, or 312, and in any suit or proceeding by a taxpayer to recover any amounts paid in pursuance of a decision of the Board, the findings of the Board shall be prima facie evidence of the facts therein stated

(h) Notice and an opportunity to be heard shall be given to the taxpayer and the Commissioner and a decision shall be made as quickly as practicable Hearings before the Board and its divisions shall be open to the public The proceedings of the Board and its divisions shall be conducted in accordance with such rules of evidence and procedure as the Board may prescribe It shall be the duty of the Board and of each division to make a report in writing of its findings of fact and decision in each case, and a copy of its report shall be entered of record and a copy furnished the taxpayer If the amount of tax in controversy is more than $10,000 the oral testimony taken at the hearing shall be reduced to writing and the report shall contain an opinion in writing in addition to the findings of fact and decision All reports of the Board and its divisions and all evidence received by the Board and its divisions (including, in cases where the oral testimony is reduced to writing, the transcript thereof) shall be public records open to the inspection of the public The Board shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof Such reports shall be subject to sale in the same manner and upon the same terms as other public documents The principal office of the Board shall be in the District of Columbia, but the Board or any of its divisions may sit at any place within the United States The times and places of the meetings of the Board, and of its divisions, shall be prescribed by the chairman with a view to securing reasonable opportunity

to taxpayers to appear before the Board or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

(i) For the efficient administration of the functions vested in the Board or any division thereof, any member of the Board may administer oaths, examine witnesses, and require, by subpœna ordered by the Board or any division thereof and signed by the member, (1) the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, (2) the taking of a deposition before any designated individual competent to administer oaths under this Act, and (3) the answer in writing under oath to any question of fact submitted In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent. Any witnesses summoned or whose deposition is taken under this subdivision shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(j) The Secretary shall furnish the Board with such clerical assistance, quarters, stationery, furniture, office equipment, and other supplies as may be necessary for the efficient execution of the functions vested in it by this section

(k) The members and employees of the Board and employees assigned thereto shall receive their necessary traveling expenses, and their actual expenses incurred for subsistence while traveling on duty and away from their designated stations in an amount not to exceed $7 per day in the case of members, and $4 per day in the case of employees The Board is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1923 to fix the compensation of such employees, and to make such expenditures, including expenditures for personal services and rent at the seat of the Government and elsewhere, and for law books, books of reference, and periodicals, as may be necessary efficiently to execute the functions vested in the Board, in case such assistants and such expenditures are not suitably pro-

vided for by the Secretary under subdivision (j) All expenditures of the Board shall be allowed and paid upon the presentation of itemized vouchers therefor, signed by the chairman, out of any moneys appropriated for the collection of internal revenue taxes and allotted to the Board, or out of any moneys specifically appropriated for the purposes of the Board The Board shall be an independent agency in the executive branch of the Government

Section 274. (a) If, in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the taxpayer, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided Within sixty days after such notice is mailed the taxpayer may file an appeal with the Board of Tax Appeals established by Section 900.

(b) If the Board determines that there is a deficiency, the amount so determined shall be assessed and shall be paid upon notice and demand from the collector No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the Board shall be assessed, but a proceeding in court may be begun, without assessment, for the collection of any part of the amount so disallowed The court shall include in its judgment interest upon the amount thereof at the rate of six per centum per annum from the date prescribed for the payment of the tax to the date of the judgment. Such proceeding shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in Section 277 has expired.

(c) If the taxpayer does not file an appeal with the Board within the time prescribed in subdivision (a) of this section, the deficiency of which the taxpayer has been notified shall be assessed, and shall be paid upon notice and demand from the collector

(d) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay such deficiency shall be assessed immediately and notice and demand shall be made by the collector for the payment thereof. In

such case the assessment may be made (1) without giving the notice provided in subdivision (a) of this section, or (2) before the expiration of the sixty-day period provided in subdivision (a) of this section even though such notice has been given, or (3) at any time prior to the final decision by the Board upon such deficiency even though the taxpayer has filed an appeal. If the taxpayer does not file a claim in abatement as provided in Section 279 the deficiency so assessed (or, if the claim so filed covers only a part of the deficiency, then the amount not covered by the claim) shall be paid upon notice and demand from the collector

(e) If the taxpayer has elected to pay the tax in installments and a deficiency has been assessed, the deficiency shall be prorated to the four installments Except as provided in subdivision (d) of this section, that part of the deficiency so prorated to any installment the date for payment of which has not arrived, shall be collected at the same time as and as part of such installment That part of the deficiency so prorated to any installment the date for payment of which has arrived, shall be paid upon notice and demand from the collector.

(f) Interest upon the amount determined as a deficiency, or, if the tax is paid in installments, upon the part of the deficiency prorated to each installment, shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax, or the payment of such installment, to the date the deficiency is assessed.

(g) Where it is shown to the satisfaction of the Commissioner, that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of eighteen months If an extension is granted, the Com-

missioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of six per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of one per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period

Section 279 (a) If a deficiency has been assessed under subdivision (d) of Section 274, the taxpayer, within ten days after notice and demand from the collector for the payment thereof, may file with the collector a claim for the abatement of such deficiency, or any part thereof, or of any interest or additional amounts assessed in connection therewith, or of any part of any such interest or additional amounts. Such claim shall be accompanied by a bond, in such amount, not exceeding double the amount of the claim, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in subdivision (c) of this section Upon the filing of such claim and bond, the collection of so much of the amount assessed as is covered by such claim and bond shall be stayed pending the final disposition of the claim.

(b) If a claim is filed as provided in subdivision (a) of this section the collector shall transmit the claim immediately to the Commissioner who shall by registered mail notify the taxpayer of his decision on the claim The taxpayer may within sixty days after such notice is mailed file an appeal with the

Board of Tax Appeals If the claim is denied in whole or in part by the Commissioner (or by the Board in case an appeal has been filed) the amount, the claim for which is denied, shall be collected as part of the tax upon notice and demand from the collector, and the amount, the claim for which is allowed, shall be abated A proceeding in court may be begun for any part of the amount, claim for which is allowed by the Board Such proceeding shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in Section 277 has expired

(c) If the claim in abatement is denied in whole or in part, there shall be collected, at the same time as the part of the claim denied, and as a part of the tax, interest at the rate of six per centum per annum upon the amount of the claim denied, from the date of notice and demand from the collector under subdivision (d) of Section 274 to the date of the notice and demand under subdivision (b) of this section If the amount included in the notice and demand from the collector under subdivision (b) of this section is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of one per centum a month (or, in the case of estates of incompetent, deceased, or insolvent persons, at the rate of six per centum per annum) from the date of such notice and demand until it is paid

(d) Except as provided in this section, no claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any income, war profits, or excess profits tax

Section 280 If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any income, war profits, or excess profits tax imposed by the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the amount which would be assessed (whether as deficiency or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been

enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand) as in the case of the taxes imposed by this title, except as otherwise provided in Section 277

Section 308 (a) If the Commissioner determined that there is a deficiency in respect of the tax imposed by Part I of this title, the executor, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided Within sixty days after such notice is mailed the executor may file an appeal with the Board of Tax Appeals established by Section 900

(b) If the Board determines that there is a deficiency, the amount so determined shall be assessed and shall be paid upon notice and demand from the collector No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the Board shall be assessed, but a proceeding in court may be begun, without assessment, for the collection of any part of the amount so disallowed. The court shall include in its judgment interest upon the amount thereof at the rate of six per centum per annum from the date prescribed for the payment of the tax to the date of the judgment Such proceeding shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in Section 310 has expired.

(c) If the executor does not file an appeal with the Board within the time prescribed in subdivision (a) of this section, the deficiency of which the executor has been notified shall be assessed, and shall be paid upon notice and demand from the collector.

(d) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately and notice and demand shall be made by the collector for the payment thereof. In such case the assessment may be made (1) without giving the notice provided in subdivision (a) of this section, or (2) before

the expiration of the sixty-day period provided in subdivision (a) of this section even though such notice has been given, or (3) at any time prior to the final decision by the Board upon such deficiency even though the executor has filed an appeal If the executor does not file a claim in abatement as provided in Section 312, the deficiency so assessed (or, if the claim so filed covers only a part of the deficiency, then the amount not covered by the claim) shall be paid upon notice and demand from the collector.

(c) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of six per centum per annum from the due date of the tax to the date the deficiency is assessed

(f) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary; conditioned upon the payment of the deficiency in accordance with the terms of the extension In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of six per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of one per centum a month for the period from the time fixed by the

terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period

(g) The fifty per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (c) of this section shall not be applicable.

Section 312 (a) If a deficiency has been assessed under subdivision (d) of Section 308, the executor, within thirty days after notice and demand from the collector for the payment thereof, may file with the collector a claim for the abatement of such deficiency, or any part thereof, or of any interest or additional amounts assessed in connection therewith, or of any part of any such interest or additional amounts Such claim shall be accompanied by a bond, in such amount, not exceeding double the amount of the claim, and with such sureties, as the collector deems necessary conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in subdivision (c) of this section Upon the filing of such claim and bond, the collection of so much of the amount assessed as is covered by such claim and bond shall be stayed pending the final disposition of the claim.

(b) If a claim is filed as provided in subdivision (a) of this section the collector shall transmit the claim immediately to the Commissioner who shall by registered mail notify the executor of his decision on the claim The executor may within sixty days after such notice is mailed file an appeal with the Board of Tax Appeals. If the claim is denied in whole or in part by the Commissioner (or by the Board in case an appeal has been filed) the amount, the claim for which is denied, shall be collected as part of the tax upon notice and demand from the collector, and the amount, the claim for which is allowed, shall be abated A proceeding in court may be begun for any part of the amount, claim for which is allowed by the Board Such proceeding shall be begun within one year after the final de-

cision of the Board, and may be begun within such year even though the period of limitation prescribed in Section 310 has expired

(c) If the claim in abatement is denied in whole or in part, there shall be collected, at the same time as the part of the claim denied, and as a part of the tax, interest at the rate of six per centum per annum upon the amount of the claim denied, from the date of notice and demand from the collector under subdivision (d) of Section 308 to the date of the notice and demand under subdivision (b) of this section If the amount included in the notice and demand from the collector under subdivision (b) of this section is not paid in full within thirty days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of one per centum a month from the date of such notice and demand until it is paid

(d) Except as provided in this section, no claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate tax

Section 316 If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand) as in the case of the taxes imposed by Part I of this title, except that the period of limitation prescribed in Section 1009 shall be applied in lieu of the period prescribed in subdivision (a) of Section 310

Section 324 The tax imposed by Section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by Section 301

PART III

CONGRESSIONAL COMMITTEE REPORTS

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Extracts from House Ways and Means Committee Report

The committee recommends the establishment of a Board of Tax Appeals to which a taxpayer may appeal prior to the payment of an additional assessment of income, excess profits, war-profits, or estate taxes. Although a taxpayer may, after payment of his tax, bring suit for the recovery thereof and thus secure a judicial determination of the questions involved, he can not, in view of Section 3224 of the Revised Statutes, which prohibits suits to enjoin the collection of taxes, secure such a determination prior to the payment of the tax. The right of appeal after payment of the tax is an incomplete remedy, and does little to remove the hardship occasioned by an incorrect assessment. The payment of a large additional tax on income received several years previous and which may have, since its receipt, been either wiped out by subsequent losses, invested in nonliquid assets, or spent, sometimes forces taxpayers into bankruptcy, and often causes great financial hardship and sacrifice. These results are not remedied by permitting the taxpayer to sue for the recovery of the tax after this payment. He is entitled to an appeal and to a determination of his liability for the tax prior to its payment.

Under the provisions of the proposed bill creating a Board of Tax Appeals the taxpayer may, prior to the payment of the additional assessment of income, war-profits, excess profits, or estate taxes, appeal to the Board of Tax Appeals and secure an impartial and disinterested determination of the issues involved. In the consideration of the appeal both the Government and the taxpayer will appear before the Board to present

their cases, with the result that each member of the Board will sit solely as judge and not as both judge and advocate The provision allowing the Commissioner to sue in court for the recovery of any taxes thought by him to be due in excess of that decided by the Board to be due relieves the Board from the responsibility of finally passing upon questions involving large amounts and removes the necessity for a decision in favor of the Government in order to force the issues into court The divisions of the board will sit locally throughout the United States to enable taxpayers to argue their cases with as little inconvenience and expense as is practicable This proposal meets all the objections that have been raised as to the existing system and at the same time provides for a flexible and informal procedure which will permit the Board to determine expeditiously the cases brought before it on appeal

Section 274 (a) This subdivision provides for notice, and an opportunity for an appeal to the Board of Tax Appeals (a body provided for in Section 900 of the proposed Act), in cases in which the Commissioner determined that there is a deficiency

Section 274 (b) The first sentence is similar to that of the third sentence of the second paragraph of Section 250 (d) of the existing law, preceding the proviso The subdivision further empowers the Commissioner to proceed in court to collect amounts determined by the Commissioner to be a deficiency, but disallowed by the Board In other words, the section requires the Commissioner to resort to the courts in the event of an adverse decision by the Board

Section 274 (c) and (d) The substance of these provisions is similar, with changes made necessary by the provision for a board of tax appeals, to those now contained in the second paragraph of subdivision (d) of Section 250.

Section 274 (e) This subdivision clarifies and consolidates similar provisions contained in the first sentence of the second paragraph of subdivision (b) and in the second paragraph of subdivision (e) of Section 250 of the existing law

Section 274 (f). The period during which interest on a deficiency shall be assessed is fixed as that between the date for the payment of the tax and the date the deficiency is assessed

Under the existing law, no date is specified upon which the period shall end The rate of interest has been reduced from six to five per cent, on the theory that this is adequate compensation to the United States for the use of the amount of the deficiency by the taxpayer, no penalty being involved.

Section 274 (g) The Commissioner is given power, with the approval of the Secretary, to extend the time for payment of a deficiency for not more than eighteen months If an extension is granted, the Commissioner may require a bond not in excess of twice the amount of the deficiency Interest runs at the rate of five per cent during the time of such extension, on the amount so extended, and thereafter at the rate of one per cent a month on any amounts remaining unpaid There are similar provisions for extensions, differing in the rates of interest, in Section 250 (f) of the existing law, but these expired by the terms of that subdivision eighteen months after the passage of the Act It is desirable to provide for an extension of time for payment by the Commissioner, with the approval of the Secretary, in cases of unusual hardship The immediate collection of additional taxes for prior years may cause great hardship to the taxpayer and in extreme cases may force him into bankruptcy.

Section 279 (a) If the Commissioner has assessed a deficiency immediately, because of his belief that the assessment or collection of the deficiency would be jeopardized by delay, the taxpayer may within ten days file with the collector a claim for abatement, accompanied by a bond in such an amount not to exceed double the claim as the collector deems necessary. The filing of the claim and bond stays the collection of the amounts covered thereby until the disposition of the claim

Under the existing law, the only limitation upon the filing of claims in abatement is that no such claim may be filed where the taxpayer has had an opportunity to appeal and be heard prior to the date of the assessment The proposed bill reaches a substantially similar result, since in all other cases than that provided for here, either the taxpayer will have had the opportunity of presenting his contentions to the Board of Tax Appeals, or the assessment is based upon a return sub-

mitted by him In either of these cases, there is no persuasive reason for an additional delay in the collection of the tax

The proposed subdivision affords the taxpayer the safeguard, not provided in the existing law, of a stay of proceedings by the collector to collect the tax, until a decision is reached on the claim The interests of the Government are adequately protected during this stay by the requirement of a bond to secure the payment of amounts not abated

Section 279 (b). This subdivision provides for action upon the claim in abatement by the Commissioner, for appeal from his decision to the Board of Tax Appeals, and for collection of such amounts as are found to be due

Section 279 (c). The provisions herein are similar to those of subdivision (c) of Section 250 The interest rate has been changed from six to five per cent, and the provision for a five per cent addition to the tax in the event that it was not paid within ten days after notice and demand has been omitted, since the addition of interest at one per cent per month on such unpaid amounts appears to be an adequate preventive of default (See explanation under Sections 274 (g) and 275 (a), supra.)

Section 308 The provisions with reference to the assessment and collection of the estate tax in the bill are similar to those for assessment and collection of the income tax as contained in Sections 274, 275, 276, 279, and 280 The existing law does not expressly require the examination and audit of the return (see Section 306 of the bill) and provides no procedure for the assessment and collection of a deficiency It will remove much administrative difficulty to set out the procedure in detail, and it is obviously desirable that this procedure as to estate taxes should, so far as possible, conform to that as to income taxes

Section 308 (a), (b), (c), and (d) Under the provisions of the proposed bill the taxpayer will be notified upon the discovery of a deficiency by the Commissioner and given thirty days in which to appeal to the Board of Tax Appeals provided for in Section 900 If no appeal is filed, the deficiency as determined by the Commissioner will be assessed and collected on notice and demand from the collector, if an appeal

is filed, the amount of the deficiency as determined by the Board will be assessed and collected in the same manner. If the deficiency or any part thereof is disallowed by the Board, it may only be collected by the Commissioner by proceeding in court within one year after the final decision of the Board.

If the Commissioner believes the assessment and collection of the deficiency will be jeopardized by delay, the deficiency shall be assessed immediately. In this event the taxpayer may, under the provisions of Section 312 of the bill, file a claim for abatement with a bond for payment of the amount assessed, and if such claim is denied by the Commissioner, may appeal to the Board of Tax Appeals

Section 308 (e) No similar provisions for interest upon amounts determined as a deficiency from the due date of the tax until the assessment of the deficiency are contained in the present law. Since the estate has had the use of the amount of the deficiency during this period, it may fairly be required to pay a reasonable rate of interest upon it

Section 308 (f) The Commissioner is empowered to grant, with the approval of the Secretary, an extension of not over two years for the payment of the deficiency or any part of of it Interest at five per cent per year runs during the period of the extension The Commissioner may require a bond for the payment of the tax in his discretion There is no provision in the existing law for an extension of time for the payment of the deficiency

Section 308 (g) There is no similar provision in the present law for the assessment and collection of the fifty per cent addition to the tax provided by Section 3176, Revised Statutes, in case a false or fraudulent estate tax return is willfully made. The provision, in addition to clarifying the procedure for the Treasury Department, will give the taxpayer the opportunity of an appeal and hearing before the Board of Tax Appeals.

Section 312 These provisions for a claim in abatement by the taxpayer, in the event of the immediate assessment of a tax whose collection the Commissioner believes will be jeopardized by delay, have been discussed under Section 308, supra Similar provisions as to the income tax are contained in Section 279 of the bill

Section 312 (d) Since in cases other than those provided for in Section 312, either the assessment of the tax will be based on the taxpayer's own return or the taxpayer will have had the opportunity of being heard, there is no reason for permitting a further delay in the collection of the tax by the filing of a claim in abatement.

Extracts from Senate Finance Committee Report

This bill provides for the establishment of a Board of Tax Appeals to which a taxpayer may appeal prior to the payment of an additional assessment of income, excess profits, war-profits, or estate taxes Although under the existing law a taxpayer may, after payment of his tax, bring suit for the recovery thereof and thus secure a judicial determination on the questions involved, he can not, in view of Section 3224 of the Revised Statutes, which prohibits suits to enjoin the collection of taxes, secure such a determination prior to the payment of the tax. The right of appeal after payment of the tax is an incomplete remedy, and does little to remove the hardship occasioned by an incorrect assessment The payment of a large additional tax on income received several years previous and which may have, since its receipt, been either wiped out by subsequent losses, invested in nonliquid assets, or spent, sometimes forces taxpayers into bankruptcy, and often causes great financial hardship and sacrifice. These results are not remedied by permitting the taxpayer to sue for the recovery of the tax after this payment. He is entitled to an appeal and to a determination of his liability for the tax prior to its payment

Under the existing law a taxpayer prior to the payment of his tax may appeal to the commissioner, who has established the Committee on Appeals and Review, to determine these appeals for him The objections that have been raised to this procedure are four. (1) The appeal is from the action of the Bureau of Internal Revenue but is taken to a committee in and part of the Bureau. It is urged that such an appeal does not involve a review by an impartial outside body, such as the taxpayer is entitled to prior to payment of the tax. (2) In the hearing on the appeal the person who is to decide the appeal

acts both as advocate and judge, since he must both protect the interests of the Government and decide the questions involved Such conditions do not insure an impartial determination of the case. (3) If the decision on the appeal is in favor of the Government, the taxpayer has the right to test the correctness of the decision in the courts, but if the decision is in favor of the taxpayer, the action of the Bureau is final and the correctness of the decision can never be tested in the courts It is contended that this condition results in the decision of most doubtful points in favor of the Government (4) The taxpayer is usually forced to come to Washington for the hearing on his appeal, an expensive and burdensome procedure

Under the provisions of the proposed bill creating a Board of Tax Appeals the taxpayer may, prior to the payment of the additional assessment of income, war profits, excess profits, or estate taxes, appeal to the Board of Tax Appeals and secure an impartial and disinterested determination of the issues involved In the consideration of the appeal both the Government and the taxpayer will appear before the Board to present their cases, with the result that each member of the Board will sit solely as judge and not as both judge and advocate The provision allowing the Commissioner to sue in court for the recovery of any taxes thought by him to be due in excess of that decided by the Board to be due relieves the Board from the responsibility of finally passing upon questions involving large amounts and removes the necessity for a decision in favor of the Government in order to force the issues into court The divisions of the Board will sit locally throughout the United States to enable taxpayers to argue their cases with as little inconvenience and expense as is practicable This proposal meets all the objections that have been raised as to the existing system and at the same time provides for a flexible and informal procedure which will permit the Board to determine expeditiously the cases brought before it on appeal.

Section 274 (a) This subdivision provides for notice and an opportunity for an appeal to the Board of Tax Appeals (a body independent of the Bureau of Internal Revenue, provided

for in Section 1000 of the proposed Act), in cases in which the commissioner determines that there is a deficiency

Section 274 (b) The first sentence is similar to that of the third sentence of the second paragraph of Section 250 (d) of the existing law, preceding the proviso The subdivision further empowers the Commissioner to proceed in court to collect amounts determined by him to be a deficiency, but disallowed by the Board In other words, the section authorizes the Commissioner to resort to the courts in the event of an adverse decision by the Board A specific provision has been added for interest at the rate of six per cent per annum from the time the tax fell due, on the amount of any deficiency in tax recovered in court The subdivision has been partially re written to secure greater clarity

Section 274 (c) and (d). The substance of these provisions is similar, with changes made necessary by the provision for a Board of Tax Appeals, to those now contained in the second paragraph of subdivision (d) of Section 250

Section 274 (e) This subdivision clarifies the provisions contained in the first sentence of the second paragraph of subdivision (b) of Section 250 of the existing law

Section 274 (f). The period during which interest on a deficiency shall be assessed is fixed as that between the date for the payment of the tax and the date the deficiency is assessed Under the existing law, no date is specified upon which the period shall end.

Section 274 (g). The Commissioner is given the power with the approval of the Secretary to extend the time for payment of a deficiency for not more than eighteen months If an extension is granted, the Commissioner may require a bond not in excess of twice the amount of the deficiency Interest runs at the rate of six per cent during the time of such extension, on the amount so extended, and thereafter at the rate of one per cent a month on any amounts remaining unpaid. There are similar provisions for extension in Section 250 (f) of the existing law, but these expired by the terms of that subdivision eighteen months after the passage of the Act It is desirable to provide for an extension of time for payment by the Commissioner with the approval of the Secretary in cases of un-

usual hardship The immediate collection of additional taxes for prior years may cause great hardship to the taxpayer and in extreme cases may force him into bankruptcy

Section 279 (a). If the Commissioner has assessed a deficiency immediately, because of his belief that the assessment or collection of the deficiency would be jeopardized by delay, the taxpayer may within ten days file with the collector a claim for abatement, accompanied by a bond in such an amount not to exceed double the claim as the collector deems necessary The filing of the claim and bond stays the collection of the amounts covered thereby until the disposition of the claim

Under the existing law, the only limitation upon the filing of claims in abatement is that no such claim may be filed where the taxpayer has had an opportunity to appeal and be heard prior to the date of the assessment The bill reaches a substantially similar result, since in all other cases than that provided for here either the taxpayer will have had the opportunity of presenting his contentions to the Board of Tax Appeals or the assessment is based upon a return as submitted by him In either of these cases there is no persuasive reason for an additional delay in the collection of the tax

The proposed subdivision affords the taxpayer the safeguard, not provided in the existing law, of a stay of proceedings by the collector to collect the tax, until a decision is reached on the claim The interests of the Government are adequately protected during this stay by the requirement of a bond to secure the payment of amounts not abated

Section 279 (b). This subdivision provides for action upon the claim in abatement by the Commissioner, for appeal from his decision to the Board of Tax Appeals, and for collection of such amounts as are found to be due

Section 279 (c) The provisions herein are similar to those of subdivision (e) of Section 250 The provision for a five per cent addition to the tax in the event that it was not paid within ten days after notice and demand has been omitted, since the addition of interest at one per cent per month on such unpaid amounts appears to be an adequate preventive of

default. (See explanation under Sections 274 (g) and 275 (a) supra)

Section 308 (a), (b), (c), and (d). Under the provisions of the bill the taxpayer will be notified upon the discovery of a deficiency by the commissioner and given sixty days in which to appeal to the Board of Tax Appeals, provided for in Section 1000. If no appeal is filed, the deficiency as determined by the Commissioner will be assessed and collected on notice and demand from the collector, if an appeal is filed, the amount of the deficiency as determined by the Board will be assessed and collected in the same manner If the deficiency or any part thereof is disallowed by the Board, it may only be collected by the Commissioner by proceeding in court within one year after the final decision of the Board

If the Commissioner believes the assessment and collection of the deficiency will be jeopardized by delay, the deficiency shall be assessed immediately In this event, the taxpayer may, under the provisions of Section 312 of the bill, file a claim for abatement with a bond for payment of the amount assessed, and if such claim is denied by the Commissioner, may appeal to the Board of Tax Appeals

Section 308 (e). No similar provisions for interest upon amounts determined as a deficiency from the due date of the tax until the assessment of the deficiency are contained in the present law Since the estate has had the use of the amount of the deficiency during this period, it may fairly be required to pay a reasonable rate of interest upon it

Section 308 (f) The Commissioner is empowered to grant, with the approval of the Secretary, an extension of not over two years for the payment of the deficiency or any part of it Interest at six per cent per year runs during the period of the extension The Commissioner may require a bond for the payment of the tax at his discretion There is no provision in the existing law for an extension of time for the payment of the deficiency

Section 308 (g) There is no similar provision in the present law for the assessment and collection of the fifty per cent addition to the tax provided by Section 3176, Revised Statutes, in case a false or fraudulent estate tax return is wilfully made

The provision, in addition to clarifying the procedure for the department, will give the taxpayer the opportunity of an appeal and hearing before the Board of Tax Appeals

Section 312. These provisions for a claim in abatement by the taxpayer, in the event of the immediate assessment of a tax whose collection the Commissioner believes will be jeopardized by delay, has been discussed under Section 308, supra. Similar provisions as to the income tax are contained in Section 279 of the bill

Section 312 (d) Since in cases other than those provided for in Section 312, either the assessment of the tax will be based on the taxpayer's own return, or the taxpayer will have had the opportunity of being heard, there is no reason for permitting a further delay in the collection of the tax by the filing of a claim in abatement.

Section 280. This section provides for the assessment and collection of taxes found to be due under prior revenue acts in the manner provided in the bill

PART IV

FORMS OF BUREAU LETTERS

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Number 1

30-DAY LETTER—INCOME TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

. . ..
.. . .
. . .. .

You are granted thirty days from the date of this letter within which to present a protest, supported by additional

evidence or brief, against this determination of a deficiency Upon request submitted within the period mentioned, you will also be granted a hearing in the Bureau with reference to the matter A request for a hearing should contain (a) the name and address of the taxpayer, (b) in the case of a corporation, the name of the State of incorporation, (c) a designation by date and symbol of the notice or notices with respect to which the hearing is desired, (d) a designation of the year or years involved and a statement of the amount of tax in dispute for each year, (e) an itemized schedule of the findings of the Unit to which the taxpayer takes exception, and (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the Bureau to be due from you, you will, in accordance with the provisions of Section 274 of the Revenue Act of 1924, be advised by registered mail of the final determination of the Commissioner as to the amount of the deficiency, and allowed sixty days from the mailing of the letter in which to file an appeal to the Board of Tax Appeals in the event you do not acquiesce in such final determination

If you acquiesce in the determination of a deficiency as disclosed in this letter and the accompanying statements, you are requested to sign the enclosed agreement consenting to the assessment of such deficiency, and forward it to the Commissioner of Internal Revenue, Washington, D C, for the attention of . In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to

Respectfully,

Enclosures.

Statements

Agreement—Form A

Number 3

60-DAY LETTER—INCOME TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

. . . . . .

In accordance with the provisions of Section 274 of the Revenue Act of 1924, you are allowed sixty days from the date of this letter within which to file an appeal to the Board of Tax Appeals contesting in whole or in part the correctness of this determination

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the sixty days prescribed and an assessment has been made, or where a taxpayer has appealed and an assessment in accordance with the final decision on such appeal has been made, no claim in abatement in respect of any part of the deficiency will be entertained.

If you acquiesce in this determination and do not desire to file an appeal, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of . In the event that you acquiesce in a part of the determination, the agreement should be executed with respect to the items agreed to.

Respectfully,

Enclosures.
Statements
Agreement—Form A

Number 3

Form A

CONSENT AGREEMENT

Agreement Consenting to Assessment of a Deficiency

The undersigned taxpayer hereby waives the right of appeal under Section 274 (a) of the Revenue Act of 1924 with respect to the items listed below* and consents to the immediate assessment of the deficiency in tax resulting therefrom These items are included in a deficiency in tax aggregating $ . .. as indicated by letter from the Commissioner of Internal Revenue, Washington, D C, dated . . . . . bearing the symbols . . . .., or as indicated in the report of the Revenue Agent in Charge at .. .. , dated, ...

(Attach additional sheets if necessary)

....

(Name)

. .. .

(Address)

Date .... By .. ..

*Where the taxpayer consents to the assessment of the entire amount of the deficiency shown by the letter from the Commissioner or as indicated in the report of the Revenue Agent in Charge, the items need not be listed, reference may be made to the letter or report

NOTE This agreement is subject to the approval of the Commissioner and is not an agreement as provided under Section 1006, Revenue Act of 1924

Number 4

JEOPARDY ASSESSMENT LETTER—INCOME TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

. . . . . .
. . . . . .
. . . . . .

In accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, there has been assessed against you an income and excess profits tax amounting to $ for the taxable year , the details of which are set forth in the attached statements

Under the provisions of Section 279 (a) of the Act you have the right to file with the Collector of Internal Revenue, within ten days after notice and demand for payment, a claim for abatement of this tax or any part thereof. The claim should have attached to it all evidence and data upon which you rely in support thereof, and should be accompanied by a bond not exceeding double the amount of the claim, with such sureties as the Collector deems necessary. When the claim is received by the Collector it will be transmitted to the Commissioner of Internal Revenue, Washington, D C., who will notify you of the action taken

Respectfully,

Enclosures
Statements

Number 5

30-DAY CLAIM-IN-ABATEMENT LETTER—INCOME TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

Reference is made to your claim for abatement of a deficiency in tax amounting to $, assessed against you for the taxable year , which is now being given consideration by this office

You are hereby granted thirty days from the date of this letter within which to present a protest, supported by additional evidence or brief, against this determination of a deficiency Upon request submitted within the period mentioned, you will also be granted a hearing in the Bureau with reference to the matter A request for a hearing should contain (a) the name and address of the taxpayer, (b) in the case of a corporation, the name of the State of incorporation, (c) a designation by date and symbol of the notice or notices with respect to which the hearing is desired, (d) a designation of the year or years involved and a statement of the amount of tax in dispute for each year, (e) an itemized schedule of the findings of the Income Tax Unit to which the taxpayer takes exception, and (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception Respectfully,

Number 6

USUAL 30-DAY LETTER—ESTATE TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

O F #152
MT-ET-
District of
Estate of
Date of Death
Tentative Deficiency Tax $

An audit and review of the estate tax return, Form 706, filed for the above named estate, have resulted in a tentative determination of a deficiency in the tax amounting to $
This deficiency results from certain adjustments which have been made and are as hereinafter indicated

On the third sheet of this communication is a complete summary of the returned and tentatively determined values placed upon the property, and also the claimed and tentatively allowed deductions Following the summary is an itemization of the tentative findings

If you object to these tentative findings, in whole or in part, and desire to offer any protest for the consideration of the Bureau, such exceptions must be filed in this office within thirty days from the date of this letter. If a protest is presented, it may be accompanied by such brief, or argument, as you may care to offer, and must be supported by all the evidence relied upon. The evidence should be in the form of affidavits, original documents, or certified copies thereof, or other competent evidence. Upon presentation of a protest, as aforesaid, careful consideration will be given to it before the tax liability of the estate is finally determined An oral hearing is not a prerequisite to consideration of a protest If, however, you desire to be accorded a hearing in the Bureau in regard to this tentative deficiency, request therefor must be made within thirty days from the date of this communication

If you desire to have a hearing set for any particular date, your request should so state, and the date suggested by you will be confirmed by this office, if possible All hearings relative to these tentative findings will be held only in Washington, D. C If you do not appear in person at the hearing your representative must be clothed with a properly executed power of attorney

A request for an informal hearing should contain (a) the name of the estate, (b) a reference to the date and symbols appearing on this communication, (c) an itemized schedule of the findings of this Unit to which you take exception, and (d) a summary statement of the ground upon which you rely in connection with each exception

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the Bureau to be due from the estate, you will, in accordance with the provisions of Title III, Part I, of the Revenue Act of 1924, be advised by registered mail of the final determination of the Commissioner as to the amount of the deficiency and allowed sixty days from the mailing of the letter in which to file an appeal to the Board of Tax Appeals in the event you do not acquiesce in such final determination

If you acquiesce in whole or in part in the tentative determination of the deficiency as disclosed in this letter, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency resulting from the findings in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit

Such portion, if any, of the tentatively determined deficiency tax herein indicated, as you may admit to be proper, may be paid at once to the Collector of Internal Revenue, at

together with such interest, or additions, if any, as may be shown by this communication

The return shows .

Estate of Date of death

SUMMARY

	Returned (706)	Tentatively Determined on Review
Gross Estate:		
Real estate		
Stocks and bonds		
Mortgages, notes, cash, and insurance		
Other miscellaneous property		
Transfers		
Powers of appointment		
Property identified as taxed within five years		
Total gross estate		
Deductions:		
Funeral expenses		
Administration expenses—		
Executor's fee		
Attorney's fee		
Miscellaneous		
Debts of decedent		
Unpaid mortgages		
Net losses during settlement		
Support of dependents		
Property identified as taxed within five years		
Charitable, public, and similar bequests		
Specific exemption — (resident decedents only)		
Total		
Net estate for tax		
Total tax		
Tentative Deficiency tax		

Number 7

30-DAY LETTER FOR AMOUNTS $50 00 OR LESS—ESTATE TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
MT-ET-
District of
Estate of
Date of death
Tentative Deficiency Tax $

An audit and review of the estate tax return, Form 706, filed for the above named estate, have resulted in a tentative determination of a deficiency in the tax amounting to $
This tentative deficiency tax results from certain changes made by the Bureau The changes are not itemized in this communication for the reason that the Internal Revenue Agent who verified the return for this estate has already substantially advised the representative of the estate of the changes recommended by him, which form the basis of this tentative audit and review

Upon request, this office will be pleased to furnish an itemized statement of the changes made which result in the tentatively determined deficiency tax herein indicated

In the event that request is made for an itemization of the changes, and they are assented to, in whole or in part, you should sign the enclosed agreement consenting to the assessment of the deficiency resulting from the findings in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit If, however, you do not desire an itemization of the changes made, and approve the tentatively determined deficiency tax, as herein indicated, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency tax herein tentatively determined and forward it to the Commissioner of Internal Revenue as above stated

If you object to these tentative findings, in whole or in part, and desire to offer any protest for the consideration of the Bureau, such exceptions must be filed in this office within thirty days from the date of this letter If a protest is presented, it may be accompanied by such brief, or argument, as you may care to offer, and must be supported by all the evidence relied upon The evidence should be in the form of affidavits, original documents, or certified copies thereof, or other competent evidence Upon presentation of a protest, as aforesaid, careful consideration will be given to it before the tax liability of the estate is finally determined An oral hearing is not a prerequisite to consideration of a protest If, however, you desire to be accorded a hearing in the Bureau in regard to this tentative deficiency, request therefor must be made within thirty days from the date of this communication

If you desire to have a hearing set for any particular date, your request should so state, and the date suggested by you will be confirmed by this office, if possible All hearings relative to these tentative findings will be held only in Washington, D C It you do not appear in person at the hearing your representative must be clothed with a properly executed power of attorney.

A request for an informal hearing should contain (a) the name of the estate, (b) a reference to the date and symbols appearing on this communication, (c) an itemized schedule of the findings of this Unit to which you take exception, and (d) a summary statement of the ground upon which you rely in connection with each exception

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the Bureau to be due from the estate, you will, in accordance with the provisions of Title III, Part I, of the Revenue Act of 1924, be advised by registered mail of the final determination of the Commissioner as to the amount of the deficiency and allowed sixty days from the mailing of the letter in which to file an appeal to the Board of Tax Appeals in the event you do not acquiesce in such final determination.

Such portion, if any, of the tentatively determined deficiency tax herein indicated, as you may admit to be proper, may be

paid at once to the Collector of Internal Revenue at
together with such interest,
or additions, if any, as may be shown by this communication
The return shows . . . .

Number 8

30-DAY LETTER WHERE SIX OR LESS ADJUSTMENTS AND THE DEFICIENCY IS MORE THAN $50 00— ESTATE TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
MT-ET-
District of
Estate of
Date of death
Tentative Deficiency Tax $

An audit and review of the estate tax return, Form 706, filed for the above named estate, have resulted in a tentative determination of a deficiency in the tax amounting to $. This tentative deficiency tax results from certain changes made by the Bureau, which are hereinafter itemized for your information.

If you object to these tentative findings, in whole or in part, and desire to offer any protest for the consideration of the Bureau, such exceptions must be filed in this office within thirty days from the date of this letter If a protest is presented, it may be accompanied by such brief, or argument, as you may care to offer, and must be supported by all the evidence relied upon The evidence should be in the form of affidavits, original documents, or certified copies thereof, or other competent evidence. Upon presentation of a protest, as aforesaid, careful consideration will be given to it before the tax liability of the estate is finally determined An oral hearing is not a prerequisite to consideration of a protest If,

however, you desire to be accorded a hearing in the Bureau in regard to this tentative deficiency, request therefor must be made within thirty days from the date of this communication

If you desire to have a hearing set for any particular date, your request should so state, and the date suggested by you will be confirmed by this office, if possible All hearings relative to these tentative findings will be held only in Washington, D. C If you do not appear in person at the hearing your representative must be clothed with a properly executed power of attorney

A request for an informal hearing should contain (a) the name of the estate, (b) a reference to the date and symbols appearing on this communication; (c) an itemized schedule of the findings of this Unit to which you take exception, and (d) a summary statement of the ground upon which you rely in connection with each exception

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the Bureau to be due from the estate, you will, in accordance with the provisions of Title III, Part I, of the Revenue Act of 1924, be advised by registered mail of the final determination of the Commissioner as to the amount of the deficiency and allowed sixty days from the mailing of the letter in which to file an appeal to the Board of Tax Appeals in the event you do not acquiesce in such final determination.

If you acquiesce in whole or in part in the tentative determination of the deficiency as disclosed in this letter, you are requested to sign the enclosed agreement consenting to the assessment of the deficiency resulting from the findings in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D C, for the attention of the Estate Tax Division, Miscellaneous Tax Unit

Such portion, if any, of the tentatively determined deficiency tax herein indicated, as you may admit to be proper, may be paid at once to the Collector of Internal Revenue, at
together with such interest, or additions, if any, as may be shown by this communication

The return shows

The return has been verified as correct except as to the following

	Returned	*Tentatively Determined*

Number 9

JEOPARDY ASSESSMENT LETTER—ESTATE TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
MT-ET-
District of
Estate of
Deficiency Tax

The determination of the Federal estate tax liability of the above named estate, discloses a deficiency in the tax amounting to $ The adjustments made are shown in detail in the pages following the summary sheet

In accordance with the provisions of Section 308 (d), Title III, Part I, of the Revenue Act of 1924, assessment of the deficiency herein indicated will be made at once by the Commissioner, and in accordance with Section 312 (a), Title III, Part I of the Revenue Act of 1924, you are allowed thirty days after notice and demand from the Collector for the payment of the deficiency herein shown to file with the Collector a claim for abatement of this deficiency, or any part thereof, or of any interest or additional amounts assessed in connection therewith, or of any part of any such interest or additional amounts.

If you file a claim in abatement, such claim shall be accompanied by a bond, in such amount, not exceeding double the amount of the claim, and with such sureties, as the Collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in Section 312 (c), Title III, Part I, of

the Revenue Act of 1924, and the Commissioner will duly notify you by registered mail of his decision on such claim In the event that you avail yourself of the privileges of filing a claim for abatement, as aforesaid, Section 312 (b) of the Revenue Act of 1924, provides that you may, within sixty days after such notice of the Commissioner is mailed, file an appeal with the Board of Tax Appeals

If you file a claim for abatement it should be accompanied by a summary statement of the ground upon which you rely and such evidence that you may desire to offer to support your claim. If you desire a hearing before the Bureau in connection with the claim, a request therefor should be made at the time you file your claim for abatement and the Bureau will subsequently name a date convenient to you and this office for such hearing.

If a claim in abatement is not filed within the thirty days mentioned in the second paragraph of this notice, you will have to pay the tax herein indicated and seek such relief as you may desire by filing a claim for refund, copies of which may be obtained upon application to any Collector of Internal Revenue.

The right to appeal in this case to the Board of Tax Appeals will not be available to you until after the Commissioner notifies you of his decision on your claim for abatement, and the appeal must be made, if at all, within sixty days after such notification is mailed

The return shows a tax liability of $ which has been paid Such portion of the tax indicated on your return, if any, as remains unpaid, together with the deficiency herein shown, or such portion thereof to which you take no exception, and such other amounts as may be shown by this communication, should be paid to the Collector of Internal Revenue at together with such interest, if any, as may be indicated in this notice

Number 10

60-DAY LETTER—ESTATE TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue

MT-ET-
District of
Estate of
Deficiency Tax $

The Bureau desires to refer to its letter addressed to you under date of , indicating that an audit and review of the estate tax return, Form 706, filed, for the above named estate, resulted in a tentative determination of a deficiency in the estate tax amounting to $.

The tentatively determined deficiency resulted from certain adjustments which were proposed and were fully set forth in the letter heretofore mentioned It is, therefore, assumed to be unnecessary to repeat in this communication the itemization of the changes in the gross estate and in the deductions The tentative deficiency is hereby made final

The Bureau has no record of having received from you any response to its letter mentioned in the first paragraph hereof and therefore assumes that you have made none

If you have made no response to the tentative findings heretofore mentioned, and object in whole or in part to the tentatively determined deficiency tax, the only course of action open to you at this time is (1) to file an appeal with the Board of Tax Appeals, created by Section 900 of the Revenue Act of 1924, as to all of the deficiency, or such part thereof as you may object to, or (2) to pay in full the deficiency herein shown, and thereafter seek adjustment of the tax by way of a claim for refund, copies of which may be obtained from any Collector of Internal Revenue upon application If you appeal as to only a part of the deficiency the balance thereof should be paid to the Collector of Internal Revenue

If, however, you have no objections to the tentative findings as fully set forth in the letter to you from this office heretofore mentioned, it is requested that you sign and return to the Bureau promptly the form of waiver heretofore sent you, or if you object only to a part of the said tentative findings, then it is requested that you sign and return the said waiver listing thereon specifically only the changes proposed in the tentative findings to which you agree

In accordance with the provisions of Title III, Part I, of the Revenue Act of 1924, you are allowed sixty days from the date of this letter within which to file an appeal to the Board of Tax Appeals, contesting in whole or in part the correctness of this determination

Where a taxpayer has been given an opportunity to appeal to the Board of Tax Appeals and has not done so within the sixty days prescribed and an assessment has been made, or when a taxpayer has appealed and an assessment in accordance with the final determination on such appeal has been made, no claim in abatement in respect of any part of a deficiency will be entertained

The waiver, if returned by you, should be addressed to the Commissioner of Internal Revenue, Washington, D C, and marked for the attention of the Estate Tax Division, Miscellaneous Tax Unit

Such portion of the tax (original or deficiency) as you admit to be due should be paid promptly to the Collector of Internal Revenue at together with such interest, if any, as may have been tentatively shown in the thirty day letter heretofore sent you

Respectfully,

Deputy Commissioner

Number 11

ORDINARY 30-DAY LETTER—ESTATE TAX

TREASURY DEPARTMENT
Washington

Office of
Commissioner of Internal Revenue
MT-ET-
District of
Estate of
Date of Death
Tentative Deficiency Tax $

An audit and review of the return, filed for the above named estate on Form 706, in connection with supplemental data obtained upon investigation, disclose.

1.	A tax, as shown on the return (exclusive of credits, if any, claimed thereon), of .. .	$.
2	A total tax payment (exclusive of interest paid, if any) of	$ .. ...
3	Excess interest paid	$ . .
4.	Credit for estate, inheritance, legacy, or succession taxes, as tentatively allowed .	$.
5	Credit for gift tax, as tentatively allowed ..	$.... ..
6	Total of paragraphs 2, 3, 4 and 5 . .	$.
7.	Undischarged portion of tax shown on the return	$.
8	Deficiency tax, as tentatively determined	$
9	Less excess, if any of paragraphs 2, 3, 4 and 5 over paragraph 1	$. . .
10	Undischarged portion of the tentatively determined deficiency tax	$ . ..

The sums shown respectively in paragraphs 7 and 10 are exclusive of such interest, if any, as may have attached in

accordance with the rules stated in paragraphs (a) and (b) on page 4 of this letter

The undischarged portion of the tax, if any, shown on the return (paragraph 7) may be paid at once to the Collector at . , together with any interest that may be due pursuant to the rules stated in paragraph (a) on page 4 of this letter

No part of the amount shown in paragraph 10 should be paid until receipt by you from the Collector of notice and demand for payment.

* ** The tentatively determined deficiency results from certain adjustments in the gross estate, or in the deductions, or both, as hereinafter set forth On the fifth page of this communication is a complete summary of the returned and tentatively determined values of the gross estate by schedules, the claimed and tentatively allowed deductions by schedules, and the credits, if any, claimed and tentatively allowed Following the summary is an itemization of the tentative findings.

* If you acquiesce in whole or in part in the tentatively determined deficiency, as disclosed in this letter, you are requested to sign the enclosed agreement consenting to the assessment of so much of the undischarged portion of such deficiency as results from the findings in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D C, marked for the attention of the Estate Tax Division, Miscellaneous Tax Unit The assessment thereof will stop the running of interest on the amount assessed until notice and demand for payment by the Collector

If you desire to protest these tentative findings, in whole or in part, such protest in writing must be filed in this office within 30 days from the date of this letter If a protest is presented, it may be accompanied by such brief, or argument, as you may care to offer, and must be supported by all the evidence relied upon The evidence should be in the form of affidavits, original documents, or certified or verified copies thereof, or other competent evidence.

If a protest is presented, careful consideration will be given to it before the tax liability of the estate is finally determined An oral hearing is not a prerequisite to the consideration of a

protest If, however, you desire to be accorded a hearing in the Bureau, request therefor must be made within 30 days from the date of this communication

If a hearing is requested, and you desire to have it set for any particular date, your request should so state, and the date suggested by you will be reserved, if possible. All oral hearings relative to these tentative findings will be held only in Washington, D C If you do not appear in person at the hearing your representative must present a properly executed power of attorney, with a 25 cent documentary stamp affixed thereto. It will also be necessary for him to present evidence of his authority to practice before the Treasury Department See Treasury Department Circular 230 dated August 15, 1923, with supplements

A request for an informal hearing should contain (a) the name of the estate, (b) a reference to the date and symbols appearing on this communication, (c) an itemized schedule of the findings of the Bureau to which exception is taken, and (d) a summary statement of the ground relied upon in connection with each exception.

If, after consideration of any additional evidence submitted and any arguments advanced by you, a deficiency is finally determined by the Bureau to be due from the estate, you will, in accordance with the provisions of Title III, Part I, of the Revenue Act of 1924, be advised by registered mail of the final determination by the Commissioner of the amount of the deficiency and afforded 60 days from the mailing of the letter in which to file an appeal to the Board of Tax Appeals in the event you do not acquiesce in such final determination

(a) Such portion of the tax shown on the return as has not been discharged on or before the due date (one year after date of decedent's death) by payments made thereon or by excess payments of interest or credits allowed pursuant to Sections 301 (b) and 322 of the Revenue Act of 1924, bears interest at the rate of 1 per centum a month from the due date until payment is received by the Collector, except such portion thereof the time for payment of which has been extended by the Commissioner Where an extension of time has been granted, interest attaches at the rate of 6 per centum

per annum from the expiration of 6 months after the due date of the tax to the expiration of the period of the extension, and thereafter at the rate of 1 per centum a month on the total unpaid amount (i. e., the amount, the time for payment of which is extended, and interest thereon at the rate of 6 *per centum per annum from 6 months after the due date until* the expiration of the period of extension, regardless of the date of payment) until payment is received by the Collector (See Articles 9 and 83 of Regulations 68, 1924 edition.)

(b) Wherever any credit (authorized by Section 301 (b) and 322 of the Revenue Act of 1924) is allowed by the Commissioner, or any excess payment of tax or interest has been made, it will be applied first against any unpaid tax shown by the executor upon his return, Form 706, and if there remains any portion of the credit or excess payment of tax or interest not so applied, such portion will be applied against the deficiency. Such portion, if any, of the undischarged portion of the deficiency tax in this estate as may be ultimately sustained will be assessed together with interest thereon at the rate of 6 per centum per annum from the due date (one year after date of decedent's death) to the date of assessment. Such portion of the amount so assessed as is not paid within 30 days from the date of notice and demand by the Collector for payment bears interest at the rate of 1 per centum a month from the date of notice and demand until payment is received by the Collector unless, however, the Commissioner has granted an extension of time for paying the amount assessed, or a part thereof. Where an extension is granted, interest attaches at the rate of 6 per centum per annum to the amount, the time for payment of which is extended, for the period of the extension only, regardless of the date of payment. For rules governing the allowance of credits, see Article 9, *and for rules and illustration relating to interest, see Article* 85, Regulations 68, 1924 edition.

Estate of Date of death

SUMMARY

	Returned (706)	Tentatively Determined on Review
Gross Estate:		
Real estate		
Stocks and bonds		
Mortgages, notes, cash, and insurance		
Jointly owned property		
Other miscellaneous property		
Transfers		
Powers of appointment		
Property identified as previously taxed		
Total gross estate		
Deductions:		
Funeral expenses		
Administration expenses		
Executors' commissions		
Attorneys' fees		
Miscellaneous		
Debts of decedent		
Unpaid mortgages		
Net losses during settlement		
Support of dependents		
Property identified as previously taxed		
Charitable, public, and similar gifts and bequests		
Specific exemption (resident decedents only)		
Total deductions		
Net estate for tax		
Total tax		
Tentative Deficiency Tax		
Credits for estate, inheritance, legacy, or succession tax		
Credit for gift tax		

TREASURY DEPARTMENT
Internal Revenue Bureau
Estate Tax Division
Form 7821A—Revised March 1925

* Replace these two paragraphs by the following paragraphs where the deficiency is $50 00 or less (not using Summary sheet)

The tentatively determined deficiency results from certain adjustments in the gross estate, or in the deductions, or both The adjustments are not itemized in this communication for the reason that the Internal Revenue Agent who verified the return for this estate has already substantially advised the representative of the estate of the adjustments recommended by him, which form the basis of this tentative audit and review

Upon request, this office will be pleased to furnish an itemized statement of the adjustment made which result in the tentatively determined deficiency tax herein indicated

If, upon the basis of this letter (and of the itemized statement, if it is requested), you acquiesce in whole or in part in the tentatively determined deficiency, as disclosed in this letter, you are requested to sign the enclosed agreement consenting to the assessment of so much of the undischarged portion of such deficiency as results from the findings in which you acquiesce and to forward it to the Commissioner of Internal Revenue, Washington, D C, marked for the attention of the Estate Tax Division, Miscellaneous Tax Unit The assessment thereof will stop the running of interest on the amount assessed until notice and demand for payment by the Collector

** Replace this paragraph by the following paragraph where there are only six or less adjustments but the deficiency is over $50 00 (not using the Summary sheet)

The tentatively determined deficiency results from certain adjustments in the gross estate, or in the deductions, or both, as hereinafter itemized for your information.

PART V

FORMS OF U S BOARD OF TAX APPEALS

(These forms are tentative and may be altered as circumstances may render necessary)

Number		*Page*
1	Application for Admission to Practice	193
2	Petition	195
3	Application for Subpœna	197
4	Subpœna	197
5.	Order to Take Depositions	199
6	Certificate on Return of Depositions	200

(NOTE —See Rule 27 as to form and style of papers)

Form No 1

UNITED STATES BOARD OF TAX APPEALS

APPLICATION FOR ADMISSION TO PRACTICE

I, . . hereby apply for admission to practice before the United States Board of Tax Appeals, and submit the following·

1 I reside at .. . . , ...;
(Street number) (City)
County of . . . , State of ... .

2 My office address is . . . , ...
(Street number) (City)

3 I was admitted to the bar of the . . . .
(Enter name of highest court)
Court, of the State of .. .. .
on the . day of . . . . ,
and have never been suspended or disbarred from practice before said court or any court of any State or the United States, except as follows . .

. . .

. . . .

I am a member of .

(State membership in professional societies)

(Certified Public Accountants will use the following)

I was issued a certificate and authorized to practice as a certified public accountant by the . .

(Give name of board or commission)

on the . day of .. .. . , . ,

and such certificate has never been revoked nor have I been suspended from practice except as follows . . .

... .

I am a member of .

(State names of accountant s societies to which you belong)

and have never been suspended or expelled from any such society or any other recognized society of certified public accountants, except as follows . . . .

. . . . .

. . . .

(Name of applicant)

STATE OF
COUNTY OF } ss:

. . . . , being first duly sworn says that he is the person named in the foregoing application for admission to practice before the United States Board of Tax Appeals and that the statements of fact therein contained are true

. .

(Signature of applicant)

Subscribed and sworn to before me this . .. ..
day of . .. , 1`2 .

CERTIFICATE

(Suggested form)

I, ...

(State whether clerk of court or secretary of State board or commission of accountancy)

hereby certify that . . . . . , the applicant

for admission to practice before the United States Board of Tax Appeals, is duly admitted to practice as . ,
(State whether attorney or C P A)
by the . .. , of the State of
(State name of court or State board or commission of accountancy)
, and that he is now in good standing as such ..
(State whether attorney or C P A)

.
(Clerk of court or secretary of board or commission of C P A

Dated .

(SEAL)

Form No 2

UNITED STATES BOARD OF TAX APPEALS

APPEAL OF
THE JOHN DOE COMPANY,
120 BROADWAY,
NEW YORK, N Y. } Docket No.

PETITION

The above named taxpayer hereby appeals from the determination of the Commissioner of Internal Revenue set forth in his deficiency letter (bureau symbols) dated . .. , 1924, and as the basis of its appeal sets forth the following

1 The taxpayer is a Delaware corporation with principal office at 120 Broadway, New York City

2 The deficiency letter (a copy of which is attached) was mailed to the taxpayer on . , 1924

3 The taxes in controversy are (income) (profits) (estate) (gift) taxes for the (calendar or fiscal) years ( ) and are (more / less) than $10,000 00, to wit ... dollars (state exactly if possible or approximately the amount disputed)

4. The determination of tax contained in the said deficiency letter is based upon the following errors·

(Enumerate specifically the assignments of error in a concise manner)

5. The facts upon which the taxpayer relies as the basis of its appeal are as follows.

(Here set forth a brief statement of the facts—but not the evidence—in orderly and logical sequence, so as to enable the commissioner to admit or deny each allegation)

6 The taxpayer, in support of its appeal, relies upon the following propositions of law

(Here state briefly each question of law in dispute, without argument or citation)

Wherefore, the taxpayer respectfully prays that this board may hear and determine its appeal

. . . . . .

Counsel for taxpayer

. . . . . .

Post-office address

STATE OF }
COUNTY OF } ss:

William Smith, being duly sworn, says that he is the president of the John Doe Company, above named, and as such is duly authorized to verify the foregoing petition, that he has read the said petition, or had the same read to him, and is familiar with the statements therein contained, and that the facts therein stated are true, except such facts as are stated to be upon information and belief, and those facts he believes to be true

. . . .

Sworn to before me this . day of . . . . , 192

. . . .

Notary Public

(See Rules 5 and 27)

Form No. 3

UNITED STATES BOARD OF TAX APPEALS

Appeal of Docket No . ....

APPLICATION FOR SUBPOENA

To the United States Board of Tax Appeals

Application is hereby made for the issuance of a subpœna for the attendance before . .

(The United States Board of Tax Appeals, or the

....

name and official title of the person authorized to take depositions)

at .. . of the following persons whose oral testimony is desired on behalf of .. .. .

(Taxpayer or the United States)

in the matter of the tax liability of the above named taxpayer now pending on appeal

Name	Address
. . ..	. . ..
. . . .	. .
. . . . .	.. . .
.	. . . .

Details required under Rule No. 40.

. .. .
.. . .
. .. .
. . .

Dated ... ., 192

(Signed) . ...

(See Rule No. 40)

Form No. 4

UNITED STATES BOARD OF TAX APPEALS

Appeal of . Docket No ..

SUBPOENA

The President of the United States of America to .. ..
....

Greeting

You are hereby commanded under penalty of law to be and appear in your proper person before the .
(United States Board
. . ..
of Tax Appeals, or the name and official title of the person authorized to take depositions)
at . .. . . on the . . .. day of
. . , 192 . , at .. o'clock . . m,
then and there to testify on behalf of .. . .
(Taxpayer or the United States)
in the matter of the tax liability of . . . .
now pending before this Board

You are required to bring with you the following, to wit:
.. . .
.. . .
. . . .

By order of the United States Board of Tax Appeals, this . . , day of .. . , 192 .

(SEAL)

. . ..
Member

(See Rule No 40)

Proof of Service

STATE OF }
COUNTY OF } *ss*

. . .. , . , being first duly sworn says. I am a citizen of the United States of America, over the age of twenty one years, and not a party to or in any way interested in the appeal in which this subpœna was issued.

That on the . day of . . ., 192 , I served the annexed subpœna on the following witnesses named therein at the places set opposite their respective names, by delivering to and leaving with each of them personally a copy of said subpœna and at the same time exhibiting to each of them this original

Name Place of Service

. . . .
.. . .
....
. . ..

(For witnesses subpœnaed on behalf of taxpayer)

That at the time of such service I tendered to each of the said witnesses the sum of $. , the same being the fees and mileage provided by Section 900 (1) of the Revenue Act of 1924

. . . .

Subscribed and sworn to before me this day of .. . . , 192 .

. . .. ..

Form No. 5

UNITED STATES BOARD OF TAX APPEALS

Appeal of . . . . Docket No .

ORDER TO TAKE DEPOSITIONS

On reading and filing the application of .
(Taxpayer or commissioner)
to take the testimony by deposition of . .
(Names of witnesses)
. .. . .
residing at . . . , alleged to be material witnesses in this cause, at . . .. . .
(Room number, street number, and place)
on the . . day of . , 192 ,
at . o'clock m, and it appearing therefrom that a .
(Official title)
of .. . . . is a person authorized
(Address)
to administer oaths under the Revenue Act of 1924, it is by the Board, this day of .. , 192 .

ORDERED, That the depositions of the said witnesses above named be taken at .
(Room number, street number, and place)

commencing on the . day of . .., 192.. ,
at . . o'clock m

And it is further ORDERED, That the said depositions be taken before . .. . of ..
a .. .. . , who is hereby designated
(Official title)
by the Board for that purpose

The said depositions shall be taken and the same returned to this Board in accordance with the rules of the Board

.. ..
(Member, United States Board of Tax Appeals)

(SEAL)

(See Rules 41 and 42)

Form No. 6

UNITED STATES BOARD OF TAX APPEALS

CERTIFICATES ON RETURN

I, ..., the person named in the foregoing order to take depositions, hereby certify·

1 I proceeded, on the . day of .. . . . ,
A D, 192. , at the office of .. . ., in the city of . , State of ... . . ,
at .. . . o'clock, . m, under the said order (and in the presence of . ... and . ... ,
the counsel of the respective parties), to take the following depositions, viz:

. ... , a witness produced on behalf of the . . ..
(Taxpayer or United States)

. ... , a witness produced on behalf of the . . . .
(Taxpayer or United States)

. ... , a witness produced on behalf of the . ...
(Taxpayer or United States)

That said witness were examined under oath at such times and places as conditions of adjournment required, and that the testimony of said witness (or their answers to the interrogatories filed) was taken stenographically and reduced to typewriting by me or under my direction

2 I further certify that after the said testimony of said witness was reduced to writing the transcript of the testimony was read and signed by said witness in my presence, and that . .. acknowledged before
(Each of them or he)
me that said testimony was in all respects truly and correctly transcribed

3 I further certify that, after the signing of the deposition in my presence, no alterations or changes were made therein

. .. .
(Signature of person taking deposition)

.. . .
(Official title)

(SEAL)

(NOTE —The order and return should be attached to and bound with the transcript preceding the first page thereof It should then be inclosed in a sealed envelope and addressed to United States Board of Tax Appeals, Earle Building, Washington, D C)

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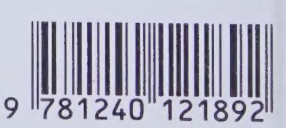

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